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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 156.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1896.—Referred to the Committee on the District of Columbia and ordered to be printed.

Mr. MCMILLAN presented the following

MEMORIAL OF JOHN B. MCCARTHY, RELATING TO AN INCREASED SUPPLY OF WATER FOR THE DISTRICT OF COLUMBIA.

WASHINGTON, *March 8, 1896.*

DEAR SIR: The undersigned, for himself and other citizens and residents of the District of Columbia, respectfully ask the consideration of your honorable Committee of Appropriations for an additional source of water supply for the District of Columbia.

Being informed that there is pending before the Senate S. R. 84, favorably reported by yourself, "To complete the Washington Aqueduct tunnel," it is asked that the same be amended as follows:

Provided further, That the Secretary of War is authorized and directed to ascertain and report on the practicability of securing an additional supply of water, by impounding or otherwise, the waters of the northwest branch of the Potomac River and the Sligo Creek, in Montgomery County, and of the probable cost of the same.

Your memorialists have no doubt, from the eminent character and ability of the engineer commission which considered and reported on the same, that the tunnel from the Aqueduct to the reservoir at Howard University will, when completed, convey all the water that is turned into it to the reservoir. Your committee has examined the proposition and approved it. We have some doubt, however, as to whether the supply will be at all times sufficient.

It is well known that the idea of constructing the reservoir at the Howard University Heights was for the purpose of securing for the elevated portions of the city of Washington, and especially that portion known as Capitol Hill or East Washington, a supply at all times from that elevation, and thus avoid the expense of maintaining a number of expensive pumping stations and standpipes; and it is seriously contended that all the water that goes to the Howard reservoir will go there at the expense of the city proper, and will reduce the pressure in the less favored sections.

Whether this is so or not, it is a generally recognized fact that an additional supply is needed, and that it is specially desirable that a supply can be secured from some elevated section of the surrounding country, so that by its own pressure or elevated source the highest rooms in the highest buildings can be liberally supplied. At present in the summer time it is well known that the supply is so uncertain and insufficient that for weeks at a time water can not be had above the second story of *many houses. Even to do this* the use of street hose

has to be reduced to the minimum, and the supply entirely cut off from the public and private fountains.

Your memorialists respectfully submit that the northwest branch of the Potomac and Sligo Creek, run through Montgomery County, Md., at less than one-half of the distance from this city than the present source of supply at the Great Falls of the Potomac. The source of the northwest branch of the Potomac is the thousand of springs in the neighborhood of Sandy Springs, Md. It is a pure water, and has always been, as the numerous analyses have abundantly shown. The same can be said of the Sligo Branch, the supply of which is about one-fourth as large as the northwest branch. Both of these supplies are so located that they are specially free from pollution in any form; neither are they likely to be polluted in the future.

When making his original investigations in 1852 for the source of a water supply for this city, General Meigs for a time seriously considered using Rock Creek. Of course the nearness of the source was a strong argument for its adoption. He had the water of Rock Creek measured, and estimated that it could be relied upon "to furnish a supply in winter and spring of 26,732,300 gallons, but liable in the heat of the summer to be diminished to 9,860,000 gallons in every twenty-four hours."

Competent engineers, who have made similar examinations of the two sources of supply referred to in this memorial, have estimated that they can be depended upon to supply about 11,000,000 gallons of water in each day, or about one-fourth as much as is needed per day. This one-fourth added to the present supply will be sufficient to guarantee a full supply for the next fifty years.

One of the greatest advantages in connection with this proposed supply is the elevation from which it comes, the official figures from the United States Geological Survey showing that the elevation of the surrounding country is 350 feet, or about 125 feet higher than that on which the Howard reservoir is located. From this high service, water can not only, at no expense but piping, be furnished to the highest building at present in this city, but could be furnished to the highest room of a ten-story building constructed on the top of the National Capitol.

The high service would be such that there would be no necessity for the present steam fire engines of the city, and they could be set aside as they have in many cities so fortunate as to have high service. So, also, could the various pumping stations in the District, as the service of water from the mains would throw a stream higher than the Capitol.

Of the other advantages it is unnecessary in this memorial to speak, but they are numerous. But from a business standpoint it may be stated that the use of this water will not cost the District of Columbia or United States one cent. The land through which these sources run will be deeded free forever to the United States, and the only expense attending the project will be to impound and convey by pipes or conduits the same to this city, whether first to the city mains, so as to get the benefit of the pressure, or to the Howard Reservoir. The surrounding lands are so situated that the only expense in impounding will be the necessary dams, the rock sides being already there. There is a supply of rock on the ground to build the dams at a comparatively small expense.

While the memorialists are confident of the facts set forth above, the United States or authorities of the District of Columbia have no information—official information—on the subject. It is for this reason that the

memorialists ask that the Secretary of War be authorized to have the necessary examination made, as is provided for in the amendment referred to. Legislation further than this will not be asked until a full investigation has been had.

In conclusion, they beg to say that they are impressed with the belief that the District needs an increased supply of water. They know that the supply is there and that to get it it will only cost the price of the pipes to convey it. Possibly the best location to get the water will be in the immediate locality of the Burnt Mills, which, as will be observed from the map made a part of this memorial, lies due north of the Capitol building, about 7 miles as the crow flies, or about 6 miles from the Howard Reservoir.

Still the whole matter of location and other details will have to be decided upon by the engineers. The memorialists are perfectly willing to abide by their report.

Respectfully,

JOHN B. MCCARTHY,
For the Memorialists.

Hon. JAMES MCMILLAN,
Chairman Committee on the District of Columbia,
United States Senate.

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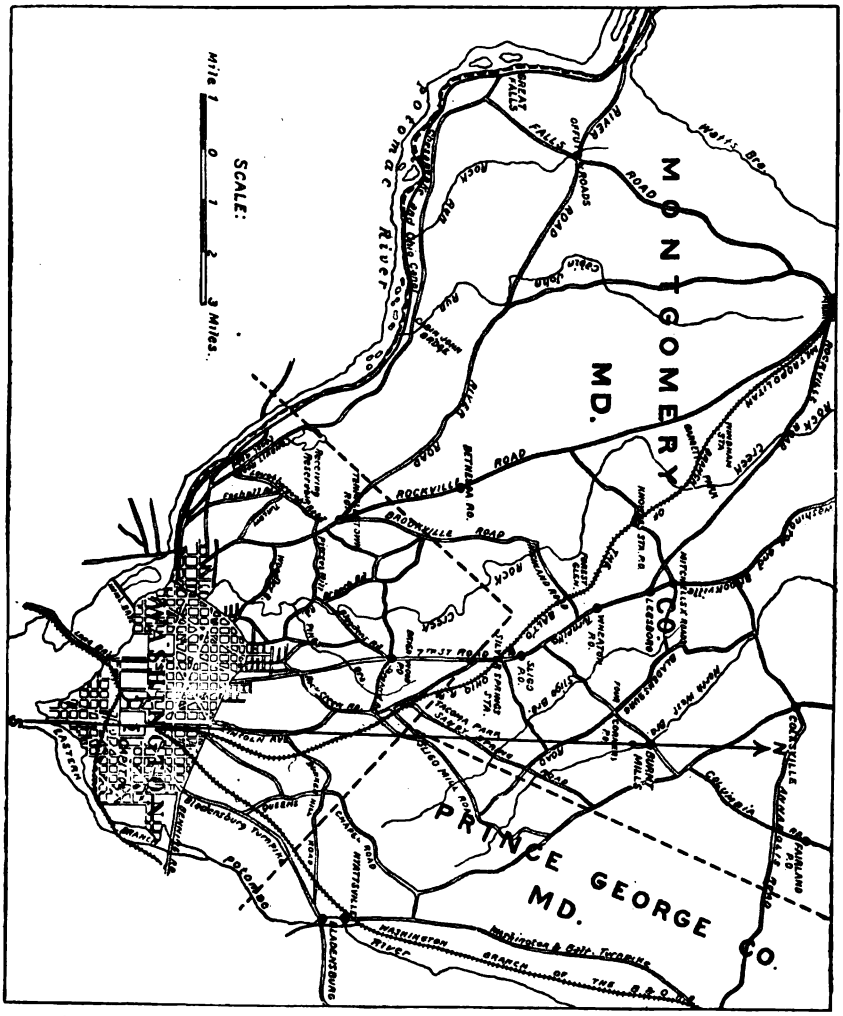
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GREAT FALLS
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KENSINGTON
COLESVILLE
WHITE OAK
CALVERTON
LAUREL
BELTSVILLE
BLADENSBURG
COLMAR MANOR
COLUMBIA
COLLEGE PARK
LEONARD MILLS
CLARKSBURG
Washington & Gulf Tracks
BRANCH OF THE B. & O. R.R.
WASHINGTON RIVER
Blackburn Turnpike
PICCADILLY
CABIN BRANCH
CABIN JOHN
PAINT BRANCH
NORTH EAST BRANCH
SOUTH EAST BRANCH
LITTLE PAINT BRANCH
BIG PAINT BRANCH
LITTLE PAINT BRANCH
WHITE OAK BRANCH
CAPITOL HEIGHTS
CAPITOL HILL
CAPITOL
WASHINGTON AVE.
CASTLETON
BRANCH
BRANCH
BRANCH

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 157.

REPORT OF HEARING

BEFORE

THE COMMITTEE ON WOMAN SUFFRAGE.

JANUARY 28, 1896.

[March 10, 1896.—*Resolved*, That there be printed for the use of the Senate the usual number of copies of the report of a hearing before the Committee on Woman Suffrage, January 28, 1896.]

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1896.

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HEARING BEFORE THE COMMITTEE ON WOMAN SUFFRAGE.

WASHINGTON, D. C., *January 28, 1896.*

The committee met in the Marble room of the Capitol at 10 o'clock a. m.

Present: The chairman (Mr. Call), and Senators Peffer and Hoar.

The speakers were introduced by the vice-president-at-large of the association, Rev. Anna Howard Shaw, of Somerton, Pa.

The CHAIRMAN. Ladies, we are ready to proceed, and the committee will be glad to hear from you.

Rev. Anna H. Shaw said:

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: We have come here to present what we consider our just claims. And it is my honor and pleasure this morning to introduce to you the ladies of many States and Territories, who will speak in behalf of woman's rights.

The first lady I introduce is Mrs. Elizabeth D. Bacon, of Connecticut.

REMARKS OF ELIZABETH D. BACON, OF CONNECTICUT.

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: I am from the historic State of Connecticut, one of the thirteen original colonies, and one that furnished more than her quota of men in the Revolutionary war; for our ancestors thoroughly believed that "all governments derive their just powers from the consent of the governed," and that "taxation without representation is tyranny."

Yet, now, after more than a century and a quarter have passed away, we find that one-half of our people have no voice whatever in our Government, and that an ever-increasing class are directly taxed without representation. The amount of property possessed by women in their own names, and not in connection with their husbands, is very large, considering the conditions under which they have existed, in the city of New Haven alone amounting to $10,976,560. Yet the owners of this can not say how a single dollar of the revenue thus obtained shall be expended.

In the town of Glastonbury, only a few miles from Hartford, where I reside, some years ago the Smith sisters, having the blood of Revolutionary ancestors coursing in their veins and feeling the injustice of taxation without representation, refused to pay their taxes. What was the result? Their cows were wrested from them and sold at public auction at great sacrifice. Now, if our forefathers were right when they cast the tea overboard in Boston Harbor, then were not the Smith sisters right? We realize that without concentrated action but little could be accomplished by their method; therefore, the rather would we arouse you to a sense of the justice of our demands.

The economic conditions of women to-day are far different from those which existed *fifty years ago. Now more than 25* per cent of the women

of our State are either property owners or engaged in industrial occupations for their own support, and oftentimes for the support of others dependent upon them. Yet they are allowed no privilege in making laws governing their property or their earnings. Is this not unjust in the extreme, and a travesty upon our boasted republican Government? Legislation has not kept apace with this radical change; but, gentlemen, is it not time a step forward should be taken?

Among the large and increasing number of women whom I represent in Connecticut, there are some brave, earnest ones, seconded in their efforts by some just and noble men, who have been and are striving to bring about more equitable laws. The progress has been slow, and you, gentlemen, who so well understand the intricacies of legislation, know what gigantic difficulties we have to overcome, and, therefore, must realize how much better this question would be settled if an amendment were added to that grand old Constitution, making this in reality "a Government of the people, by the people, and for the people."

Hence, we ask, in the interest of justice and equality and of a larger development of humanity, that you recommend an amendment that shall give to women the same rights as are possessed by men.

REMARKS OF MARY E. MAREHAND MILLIGAN, OF DELAWARE.

The next lady introduced to the committee was Mary E. Marehand Milligan, of Delaware. She said:

GENTLEMEN OF THE COMMITTEE: I am here in behalf of the womanhood of the State of Delaware. I need not take the time to explain the exact boundary lines of this State, neither need I say that this is one of the smallest States of this great Republic of ours. I need only say, by way of refreshing your memory, that Delaware, all through our Continental Constitutional Convention, stood at the head of the line, from the fact that she had been the first to sign the Declaration of Independence that has made this, our beautiful country, a free Republic.

Delaware has a history that it can be proud of. Delaware has had good men to represent it, and we give them honor. It is because we feel that you are honorable men that we call your attention to the fact that we, the mothers, wives, and sisters of Delaware, are living under a maddening injustice, and we join hands with our sister States from Maine to California, and insist, if we are to be taxed, we ought to be recognized in the law-making power. Taxation without representation has been decided to be base injustice, and has cost the best blood of our country to establish the fact. We, the women of Delaware, decline being classified with the maniac, the convict, the blanketed Indian, and the simpering idiot. This is the place assigned your wife and mother! Only think of it! Are the women of Delaware less noble than our sisters of Wyoming, Colorado, and Utah? Have our women proved or shown in any way that they were unfit to assume grave responsibilities? Are the men of Delaware less proud of their wives and mothers and daughters? I think not.

On every hand we are asked if the great suffrage movement is gaining favor in our State. I answer, yes. Upon the first call for organization there was response from all directions. Within the coming six months there will be an organized club in every county and district in the State. Our women are in earnest. And "When she will, she will!"

Gentlemen, our plea is before you. We ask only justice. As you *respect yourselves*, your homes, your wives, mothers, and sisters, give

this matter your earnest attention. It has become a grave question, and we hope that Delaware will not have to forfeit her position too seriously, but that she may be the first Eastern State to grant the right of franchise equally to all citizens, regardless of sex.

REMARKS OF MRS. ELLEN POWELL THOMPSON, OF THE DISTRICT OF COLUMBIA.

Mrs. Ellen Powell Thompson, of the District of Columbia, was the next lady introduced. She said:

Mr. CHAIRMAN AND MEMBERS OF THE COMMITTEE: I do not think it is necessary for me to say one word in advocacy of the abstract justice of women's right to an equal share with men in the exercise of the power of suffrage in this Government. I have never met a reasoning, thinking man who denies it as an abstract principle. But abstract justice and political practice are not always expressions of one and the same thing—I suppose never will be—so practically the granting or not granting the right of suffrage to a disfranchised class must turn upon the question as to whether the giving of the ballot to the disfranchised class will add to the power, the strength, the stability of the Government, and the protection and freedom of the governed.

And the vital part of this question to be answered, it seems to me, is whether the to-be-enfranchised class is sufficiently intelligent, sufficiently qualified by an understanding of the principles of a democratic form of government, and has a sufficient love for and devotion to these principles for an intelligent, judicious, and patriotic exercise of this right of suffrage. Now, I have never heard even the most prejudiced, bigoted opponent of woman suffrage deny the love and devotion of the women of this land to their country; or, in other words, their patriotism. So I think I can assume that for granted. Then, as to their intelligence and understanding of the principles of our Government. Intelligence and understanding of these principles, I think all will admit, are the results of education and experience.

Now, women have not had so very much experience in governmental matters, I will concede; nor is it easy to understand how they can have until they are tried. We can not swim without water to swim in, nor demonstrate ability in political affairs without opportunities to act in political matters. Nor has such an absurdity as demonstrated ability in something a class has never had an opportunity to do been called for whenever the right of suffrage has been granted to a disfranchised class in this country. But wherever full suffrage has been given to women, as in Wyoming, Colorado, and Utah, or municipal or school suffrage, as in some other States, I believe the power has been wisely judiciously, patriotically exercised for good government, good morals, justice, and human rights.

Then comes the understanding of the principles of our Government derived from education. And here I wish to call attention to the fact that the average degree of education is now, and has been for twenty years, greater among girls than among boys. The figures are startling. In Washington three-fifths of the pupils in the higher grades (above the seventh) are girls, two-fifths boys; and in other towns and cities only one-fourth, and in some cases, one-fifth, are boys. In these higher grades, the grades where civil government, the Constitution of the United States, and the philosophy of history are taught, are mostly girls. I believe the argument of educational training and fitting is all on the side of the women. *In the country schools,* the common people's

colleges, the proportion of girls attending is fully as preponderating. And it is this better-trained, longer-trained class of American citizens that is asking for suffrage to-day. That it can and has exercised wide beneficial influence in political affairs some recent elections show.

There are two ways by which the right of suffrage can be granted: One by the States directly, as has been done in three States; the other by an amendment to our Constitution, proposed by Congress and ratified by the States. The association which I represent, the District of Columbia Woman Suffrage Association, composed of women and men from many States of the Union, believes that the latter is the true, the better way. It believes that a principle as fundamental, as vitally fundamental to the principles of democratic government as equal suffrage for all regardless of sex should be enunciated in our organic law, and they ask its enactment at your hands.

REMARKS OF MRS. FRANK L. HUBBARD, OF ILLINOIS.

Mrs. Frank L. Hubbard, of Illinois, was the next speaker. She said:

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: I sadly fear that whatever may be brought to bear upon you this morning in the way of convincing argument will not have its full weight, because many of you gentlemen have allowed yourselves, I am afraid, to become convinced that we are the sort of women who will want to talk when you want to think. At any rate, we are the sort of women who have demonstrated some of the virtues of statesmen—patience and punctuality.

Senator CALL. Allow me to suggest that we always allow half an hour to get everybody here.

Mrs. HUBBARD. Illinois believes in this work, and Illinois hopes that from this session of Congress will come the encouragement which has been looked for for the last forty years; hoped for and planned for by our leaders all that time. Think of it; forty years of wandering in the wilderness of prejudice, and no miracle has interposed in our behalf to open the way to the promised land. It rests with you, gentlemen of this honorable committee, to say whether, before the close of this session, we shall be leagues farther on the weary way that we must travel before we can come into possession of our kingdom.

After all the logical arguments which have been brought before you I will attempt nothing along that line, but the women of my imperial State have drawn in a desire for the freedom of full citizenship with every breath from her boundless prairies. And we ask you if you know of any just cause or impediment by reason of which we should be debarred from participating in all the rights and duties of citizenship.

We have no more voice in the management of this great State of Illinois ourselves than have the men who fill our penitentiaries. And we ask for some representative voice in the government of that State so dear to us. We believe it is ours by right, and that it requires no further argument to convince you of the abstract justice of our claim. But it does seem that something more is required, and it remains for us to find out what it is.

While we are here to-day representing a body of nonpartisan women, I, as an individual, do not believe that woman's entrance into politics can be along any ethereal lines, but simply along the established lines of party politics. And when this great law-making body can be brought to realize that women will be powerful national allies, instead of fanciful creatures trying to bring about an impossible political millennium,

our claims will receive the consideration which they deserve at your hands.

Miss ANNA HOWARD SHAW. The voice of Indiana's women was to be given us through her delegate, Mr. Chairman, but she has gone to act as sergeant-at arms for Mrs. Anthony, and requests me to say that the claims of the women of Indiana for the right of suffrage, the right of self-government, rest upon the same principles as those that were acted upon by the founders of our Government.

REMARKS OF MRS. SARAH CLAY BENNETT, OF KENTUCKY

The next speaker introduced was Mrs. Sarah Clay Bennett, of Kentucky. She said:

GENTLEMEN OF THE COMMITTEE: Senator Lindsay and Representative McCreary, of Kentucky, have just presented a memorial to Congress in behalf of the Equal Rights Association of that State. This memorial asks the members of that honorable body to protect the female citizens of the United States against State denial of that right to vote for members of Congress which the women of New Jersey exercised until 1807, by a law made in pursuance of the first section of the fourteenth amendment of our National Constitution, in accordance with the Virginia Minor and Yarbrough decisions by the judges of the Supreme Court of the United States. And the few minutes I have allotted to me this morning I wish to devote to this subject.

From what the judges of the Supreme Court of the United States, who rendered the Virginia Minor and Reese decisions, say, in their Cruikshanks decision of 1876, you can very readily perceive that these gentlemen affirmed in these decisions that the privileges or immunities which were conferred upon citizens of the United States by our national Constitution were necessarily privileges of citizens of the United States; but that those which were conferred upon them by the constitutions of the States were not.

And that Congress had power to make laws providing punishments for the protection of persons in the new "right of exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude," because it came from the fifteenth amendment of the Constitution of the United States. But that Congress had no power to make such laws for the protection of persons in the right of suffrage itself in the several States, because the right to vote in the States came from the States, and was never "granted or secured by the Constitution of the United States."

And in speaking of the rights of Mrs. Minor, of Missouri, under the first section of the fourteenth amendment, in their Virginia Minor decision of 1875, the judges of the Supreme Court first said:

> She has always been a citizen from her birth, and entitled to all the privileges or immunities of citizenship. The amendment prohibited the State, of which she is a citizen, from abridging any of the privileges and immunities as a citizen of the United States, but it did not confer citizenship on her. That she had before its adoption.
>
> If the right of suffrage is one of the necessary privileges of a citizen of the United States, then the constitution and laws of Missouri, confining it to men, are in violation of the Constitution of the United States as amended, and, consequently, void.

And then decided that the right of suffrage was not one of the necessary privileges of a citizen of the United States by saying, in the conclusion of the decision:

> Being unanimously of the opinion that the Constitution of the United States does not confer the right *of suffrage upon anyone, and that* the constitutions and laws of

the several States which commit that important trust to men alone are not necessarily void, we affirm the judgment of the court below.

So the judges of the Supreme Court who rendered the Yarbrough decision of 1884 affirmed that the right of suffrage was one of the necessary privileges of citizens of the United States, and that the constitutions and laws of the States, confining it to men, were in violation of the Constitution of the United States as amended and consequently void, by holding in that decision that the right to vote for Members of Congress in the States was "conferred by the Constitution of the United States" upon the "citizens," and guaranteed against the statutes of the States by the first section of the fourteenth amendment.

And they have thus declared that the fourteenth amendment has annulled the word "male" in the constitutions and laws of the States, confining the right of suffrage to men, and restored to women that right to vote for Members of Congress which they exercised in New Jersey until 1807. So I hope you gentlemen will report a bill from this committee to Congress protecting white and black women in their constitutional right to vote for Members of Congress in the several States of this Union.

Black men now sit side by side with white men upon our great American throne, and rule over the white women of these United States. And I believe that one of the things which induced the white men of this country to extend the ballot to black men in preference to their own wives was because they thought God ruled over His church and they wanted to be like God, and therefore withheld the ballot from women in order that they might rule over their wives, just as they thought God ruled over His church. So I wish to call the attention of you gentlemen to the fact that St. Paul declares that the husband is head of the wife, even as Christ is head of the church, being Himself the Savior of the body; and that the church shall reign with Christ. For I believe that the white and black men of this country will elevate women up to places upon our great American throne, when they realize that our Creator has manifested Himself in the flesh and died upon the cross in order to lift His church up to a seat by His own side, that she might reign with Him eternally in the heavens.

REMARKS OF CAROLINE H. MILLER, OF MARYLAND.

The next speaker introduced was Caroline H. Miller, of Maryland. Mrs. Miller spoke as follows:

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: We are here to-day to give reasons why we desire the ballot. I will therefore offer no apology for the few straightforward remarks I am about to make.

Two years ago my colored boy attained his majority. About that time I had occasion to say to him, "Edward, you need not split the wood that you bring up to my room; I prefer it in large pieces." He replied, "Dis wood is too heavy to bring up de steps widout splittin' it." I wanted to explain, but it was useless. The proposition was too stupendous for his intellect; and yet he was considered competent under the laws of our country to assist in the great questions of political economy; for on election day he wended his way to the polls and deposited his ballot, thereby enrolling himself among my sovereigns.

Gentlemen, this is one reason why I want to vote; I want to apply my intelligence where it will in some measure counteract or at least neutralize the dense ignorance of my serving man. When slavery was

swept from his race—that grand consummation at which my soul rejoiced—it was through a resistless tide of human blood. How will it be removed from us? For is not slavery synonymous with taxation without representation, with the living and, it may be, suffering under laws in the framing of which we have no voice? I will tell you how I believe it will be done. Through the stirrings of an innate and overwhelming sense of justice in the minds and in the hearts of you, the lawmakers, that you can rest no longer under the startling paradox that we women, the equally intelligent and capable companions of men, are unfitted through the mere chance of sex to govern ourselves. It may be treason to admit it, but, as a general rule, I believe that women are not as strong intellectually as men. I believe, in the main, that men are better workers than women.

But what has this to do with the question? We need no more compare the two in these respects than we need compare trees with grass, or air with water. The point is this: Do the women we know govern themselves as well as do the men we know? In the capacity of mother, at least—and I presume that the majority of women become mothers—we have an ample training school in self government.

Senator PEFFER. The best in the world.

Mrs. MILLER. We have constantly to arbitrate cases in our own growing families requiring patience and prudence, sound judgment, justice, and fortitude. Why may not these attributes be as safely applied in the conducting of a nation as in the conducting of a home? An old and threadbare apothegm rushes to my lips—excuse its appearance, for it so well suits our case here to-day—"Fiat justitia, ruat cælum."

Rev. ANNA H. SHAW. Those are the sentiments of us all.

REMARKS OF LAVINA A. HATCH, OF MASSACHUSETTS.

The next lady introduced to the committee was Lavina A. Hatch, of Massachusetts. She said:

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: I have various things which I would say for Massachusetts, but as I have only a few minutes allotted me within which to speak, I shall make my argument as brief as possible.

There is nothing so hard to explain as an axiom. So every year as we come before this committee the more difficult becomes our task to give reasons why we want the ballot. It seems an affront to your good sense to bring arguments for what is self-evident. So we will not waste time on fundamental truths, but I will give a few reasons why it is expedient to give woman the ballot.

The great advances that woman has made in public affairs, her rapid strides in education, the constant appeal to her to undertake great enterprises in the interest of charity and mercy show that the nation is deprived of the highest development of her powers by not clothing her with the ballot, for the responsibility of being a factor in the Government has a sobering effect and prompts one to bring the best judgment to bear. Another reason why it is expedient is, woman suffrage has been tried in three States by full, and in many by partial, suffrage and, as all admit, it has worked well. So this is a practical and another strong reason for giving the ballot to her. Another reason of its expediency is, the more who take part in suffrage the greater hold has the nation on the loyalty and cooperation of its citizens. It is a popular loan distributed among the people of a Commonwealth.

But the greatest reason of all to me is that women are pressing to the front. Years ago there were a few leaders, but the rank and file of womankind were indifferent to the suffrage; now unbelievers are the exceptions. Even the opponents of woman suffrage admit this, and say it is in the air and bound to come sooner or later. Is it not expedient to grant it now, when women may become trained in its normal workings, rather than have it granted in the exigency of some social revolution, when it might be turned, because unskilled, into channels of bigotry and fanaticism?

Some years ago, in Massachusetts, a petition for municipal suffrage was sent to the legislature. Many friends of the cause spoke in its favor, but there was one man who used all the eloquence with which he was possessed in terms derogatory of the petition. "What," said he, "are the names of 7,000 women worth? They are of no more consequence than 7,000 mice." Now, that was a most ungentlemanly remark, and a slur upon his mother, as well as upon all women.

But from the standpoint of those of his caliber he spoke the truth. Without the moral support of the ballot a petition of 7,000 men would have been worth no more. With it 700 men, or a much less number, would have great weight.

Gentlemen, I beg of you all to use your best efforts to have this just petition granted now.

REMARKS OF MAY STOCKING KNAGGS, OF MICHIGAN.

The next lady introduced to the committee was Mrs. May Stocking Knaggs, of Michigan. She said:

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: I stand before you representing nearly 600,000 women of the age of 21 years and upward in the great State of Michigan. Of these about 100,000 are wage-earning women, in the trades, industries, and professions. These women are asking for the ballot that they may protect their industrial interests, as the ballot has been given to all classes of men to protect their various interests. There are also about 76,000 property-holding women, owning $34,000,000, and paying into the Treasury yearly something over $2,000,000 in taxes.

Our forefathers rebelled against British domination upon the principle that "taxation without representation is tyranny," and if it is tyranny for men it is tyranny for women also. Again, the women of our State are placed in a peculiar position. We often hear it said that women are classed before the law with idiots, lunatics, and criminals, but this is not true in the State of Michigan. There is nothing in the constitution of our State that debars these classes from the ballot box. The idiot and the lunatic, if they have wits enough to fold and deposit a ballot, may do so. The criminal who has served his term in the penitentiary, or been pardoned out, is not disfranchised.

In the Kansas Building at the World's Fair many of you saw a notable picture, a portrait of Frances E. Willard, her face the enthronement of intellectual and spiritual power. At one corner was a driveling idiot, at another a frantic maniac, at a third a low-browed criminal, and in the fourth a painted and befeathered Indian; and this picture was called "Woman and her political peers." But if that picture were brought into our State it would have to be rechristened "Woman and her political superiors." Gentlemen, it is humiliating; it is unjust. We therefore appeal to you in behalf of the wives, daughters, and sisters of the

loyal men of Michigan to do what lies in your power to remove from us this stigma.

Senator PEFFER. And it ought to be done.

REMARKS OF MRS. JULIA B. NELSON, OF MINNESOTA.

The next lady introduced was Julia B. Nelson, of Minnesota. She said:

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: Like all the other women who appear before you this morning, I come as a missionary, according to the first meaning of the word—missionary, one who is sent. I am sent by the women of Minnesota to advocate a doctrine that is older than the Monroe doctrine and more intensely American—the Jeffersonian, Washingtonian, broadly republican, truly democratic principle found in the Declaration of Independence—the right of the individual—the inherent, inalienable right of which the ballot is the sign and seal. Our forefathers made no mistake in saying that all men are created equal. They did not mean to say all "males." They used the word "man" in its broad sense, the sense in which we understand it when women bear the burdens of government and pay the penalties of violated law.

Without the ballot man has no assurance that his inalienable rights will be respected or protected. Where some have the ballot and others have it not, those who are ballotless hold all their privileges and possessions at the mercy of all the rest. The right of petition, which has been woman's chief right, is merely the right to be a beggar. Should the wives, mothers, and daughters of this Republic be beggars all?

I come from a State where we have little to complain of as regards rights of property. We may possess what is ours, hold it in our own names, make our wills, and even commit matrimony without invalidating them, so that the women who are dead may have their will whether they have had it while they lived or not. Widows are well provided for, as compared with the widows of many other States. But some tell us because we are accorded the rights of property and the right to education we have nothing more to ask—that we have no grievance. Had our forefathers any grievance when the people of England treated them as inferior to themselves? It was not the paltry tax on tea for which they rebelled and fought the eight years' war of the Revolution. It was because they were unwilling to be treated as inferiors—taxed without representation and governed by those whom they had no voice in choosing.

Women are treated as inferiors in this Government, which claims to be of the people, for the people, and by the people. They are classed with idiots, lunatics, maniacs, paupers, minors, convicts, wild Indians, and arch traitors—with all who have neither intelligence nor morality.

Yet we are told that our grievance is all in our minds. That is just where it is. Those who have no minds have no grievance, and the more mind we have the more grievance. The woman whose mind is developed as the minds of some of the women of to-day have had the chance to be, feels more keenly the contempt of the men who make laws in which she and her children are concerned without reference to her and her wishes or the interests of her family, than the ignorant woman of other lands, who is yoked with the beasts in the field, feels and resents a blow.

Future punishment is now generally supposed to be all in the mind, but those who know what mental suffering is are convinced that the

lake of fire and brimstone is but a faint picture of what may befall those who go unwhipped of justice through the world when the slumbering conscience wakens after death's mystery.

As the minds of American women are broadened by education and by the degree of freedom which they already possess, they resent more and more the stigma of incompetency for self-government which has been placed upon them in every State constitution, save in Wyoming, Colorado, and Utah. They protest against men's assuming to think for them and treating them as perpetual minors.

The son of Hagar, the bondwoman, was a wild man; his hand was against every man, and every man's hand was against him. The son of the free woman was the child of promise. It is because woman has not been free to develop her own powers and to decide her own destiny that there are so many Ishmaels in society to-day and so few children of promise. We ask for freedom not only because liberty is sweet to all God's children, but also because it is the condition most favorable for human development. In pleading for the passage of the joint resolution looking to a sixteenth amendment to the Constitution of the United States providing that the right of a citizen of the United States to vote shall not be abridged or denied by the United States or by any State on account of sex, we are not asking for the disfranchisement of any man nor that any woman shall be compelled to vote. Can any lover of liberty ask for more? Can any friend of justice grant us less?

REMARKS OF MRS. V. CONKLING WHITNEY, OF MISSOURI.

The next lady introduced to the committee was Mrs. V. Conkling Whitney, who spoke as follows:

MEMBERS OF THE COMMITTEE AND FRIENDS HERE: I come to-day merely to ask the right of women to vote as citizens of the United States—not as women, especially, but as citizens—because we know that the foundation upon which all free governments rest, and out of which all these natural rights to vote flow as from a common center, has been very clearly and definitely stated by Mr. Herbert Spencer, in his late work on sociology, to be the liberty of each individual, limited by the like liberty of all.

As the fundamental truth originating and yet circumscribing the validity of laws and of constitutions, it seems to me it can not be stated in a simpler form. Every person has a right and freedom to do all that he wills, provided he infringes not the equal rights and freedom of any other person; or go back of Herbert Spencer, to the foundation of all righteous legislation, and do unto others as ye would that others should do unto you; this is the law and the only law of just social relationships. And it is in this law, embodied in statute form, that the rights of individual liberty, of thought, of speech, and of political action find their complete justification and expression.

It will be observed that absolute equality is the essence of it all. Any recognition of an inequality of rights is, and must be, fatal to liberty. Under our form of government these rights inhere in the individual. They are a part of their very existence as individuals, as citizens. They are not the gift of any man or any aggregation of men. The assumption that freedom in any of its forms is a privilege conceded by society is utterly and entirely unwarrantable; because society itself, as constituted under our form of government, is a concession from the individual for mutual protection and mutual benefit. And society or government represents nothing more than the liberty of each, limited

by the liberty of all; and it is in this fundamental truth that we find the core and the essence of this right of franchise, or suffrage, alike for both men and women.

It is in this sense and flowing from this axiom that the rights of franchise inhere and appertain to all men and women alike. Franchise is in itself nothing more than a mode of participating in the common government, and represents only the interest each individual or person has therein; an interest, as you see, as vital as life and liberty itself. Now, that limitations may attach thereto, just as they attach to freedom of speech or freedom of action, is perfectly true. But they must be equal limitations applicable to all men and to all women alike as citizens, and these limitations must not be leveled at the inherent right of any individual, or class, or sex, or color.

The exclusion of criminals from franchise (convicted criminals, I should say), the designation of terms of minority as connected with the exercise of political duties, the attempt to regulate the admission of citizenship to persons coming from foreign countries—all these limitations find their justification in a principle which so far from recognizing in government or society a purely arbitrary control of the rights and exercise of self-government or personal liberty brings it down within the rigid and narrow limits of equality and necessity. The consideration before mentioned that the right of franchise is neither more nor less than the right of self-protection and self-government, as exercised through a personal participation in the common government of all, shows that if it be not a natural right, it will be difficult to say in what a natural right consists. Indeed, it is the most natural of any of our rights, inasmuch as its denial to any person is the denial of all right to personal liberty; for how can such a right exist when the right to maintain it is denied to a man or woman?

An inherent right. If the right of men and women to share in the government over us is not inherent, from whence does it come? Who can give the right to govern another? And how can man give that which he himself does not possess? Society is but the aggregate of individual men and women, and its authority represents only the conceded rights of all alike.

Again, if a man or woman can be divested of this right to vote either by themselves or by the will of government, then you must realize at once that government has no limit to its rightful tyranny. It may divest not only you and me, one person, or sex, or class, but a hundred, a thousand, a million, all except the chosen few or the imperial one, thus arriving inevitably and summarily at oligarchic or despotic rule; and if any person can divest himself or herself of this right and this duty, what other right, what other duty, is sacred from his renunciation? And so woman must vote, or society becomes chaotic or despotic.

To demonstrate the utter falsity and the pernicious and dangerous consequences of the idea that the right to share in the common government is a privilege to be farmed out by government at its discretion and to whom it chooses, it is only necessary to ask, If that be so, whence comes the right to representation?

That our Government, and other Governments, do undertake to limit the franchise to the few men as a privilege coming from the body corporate has nothing to do with the question, for I am now discussing inherent rights, not the wrong practices of our Government. Neither are we to be frightened nor driven from this position by the difficulties which may arise in readjusting our form of government to this new and righteous order of things.

No one can for a moment, with any show of reason or justice, deny that the rights of women are intrinsically and forever the same as those of men. Nor is this vital theme and topic deserving only the sneer of the vulgar or the coarse irony and jest of the more brutal part of mankind. I venture to affirm that the purity, the refinement, and intuitive reading of character, the elegant culture of the women of our land, if brought to bear upon the conduct of our political affairs, would do much to elevate them in all their aims, and to speedily and permanently conform them to higher standards of justice and equity.

The facts are, this participation of women in civil affairs is neither a new nor an uncommon experiment. In all countries and under all forms of government where political power has been of an absolute and hereditary character, women have shared it whenever they happened by birth to hold the position to which it was attached; and I confess that all history confirms the fact of their wisdom and integrity in these high positions of trust, and of their eminent ability and fitness to administer the government. With this incontrovertible evidence flooding the pages of history, it certainly is not fair to withhold any longer this right from woman and then insist that she is unfit or incapable of exercising it wisely.

It is plain that the public mind is fast ripening toward a radical change in the position of woman on this question. Already nearly all the colleges in the United States have opened their doors and welcome all women who desire to pursue a liberal course of study. Medical colleges, law schools, theological institutes, all invite woman now to come and fit herself for any and every position and profession to which her tastes and her unquestioned ability and talents may lead her; for where women are, there open forth all possibilities of attainment, of culture, and of character.

REMARKS OF MARY D. HUSSEY, OF NEW JERSEY.

The next speaker introduced to the committee was Mary D. Hussey, of New Jersey. She said:

Mr. CHAIRMAN: New Jersey was the only State of the original thirteen that came into the Union with a constitution (adopted two days before the Declaration of Independence), which guaranteed to all inhabitants equal rights, irrespective of sex.

In early acts of her legislature defining the qualifications of voters we find the words "he or she" were used, showing that the men of our State intended to enfranchise the women, who, with them, had endured all the hardships of the colonial days. And for thirty-one years the women of New Jersey had their opinions counted at the ballot box. And in one election they made such effective use of this opportunity that when the defeated party again came into power they passed an act, in 1807, unconstitutionally depriving the women of their right to vote.

But the long injustice resulting from this political crime shall not continue forever; for I stand here to represent thousands of the best women of my State who will never rest until their political disabilities are removed.

REMARKS OF MARIANNA W. CHAPMAN, OF NEW YORK.

The next lady introduced was Marianna W. Chapman, of New York. She spoke as follows:

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: In present-

ing the claims of woman suffrage we find in our opponents a constantly retreating element. Our new antisuffragists tell us that suffrage is not a right, that it is not a privilege, and that it has nothing to do with the questions of justice or injustice; that all such notions are as old-fashioned as the signers of the Declaration of Independence, and do not belong to the new code of ethics.

They insist that the community to-day is looking only at practical results, and that it is therefore necessary to base our argument upon the ground of gain or loss to the national welfare. While we do not admit the truth of these statements, we are willing to meet our adversaries upon any ground, anywhere; and we therefore claim that we have at the ballot box to-day, taking the people as men and women, the larger proportion of the saloon element, the gambling element, the criminal element, and the smaller proportion of the church element, the philanthropic element, and that the nation thereby sustains a loss of virtue.

We further claim that it sustains a loss in intelligence. It is not possible for me to reason from other than the figures of my own State, because it is only with them that I am familiar, but I think that the States on this side of the mountains at least have similar conditions with approximate results.

In his last report the secretary of the New York State University reported that 56 per cent of the students in the seminaries and academies of the State of New York were girls, and that the boys received 140 of the honor credentials and the girls 298, a proportion of 68 per cent for the girls. We shall take only 32 per cent of this superior intelligence to the polls.

And in noting the statistics of immigration for 1893, we found that there came to this country 11 foreign men to every 4 foreign women. This, with probably other circumstances, combined to produce the result in our census of 1890, which reported 56,000 more native-born white women in the State of New York than native-born white men. I say white, because the colored population is nearly equal in the matter of sex. This loss in the proportion of native-born voters argues another loss of intelligence at the ballot box.

Then we have opponents who have retreated to the last plank, insisting that behind every ballot must be a bullet to sustain its choice, whereas we know that the wisdom and experience which cast the best ballot are apt to be in inverse ratio to the power of wielding clubs and handling guns. Even if it were otherwise, these people do not remember that under the laws of the United States the only force permissible in the settlement of difficulties rests in a paid department—an army, navy, and police force—all of which is paid for by the money of men and women, both of whom are, therefore, entitled to the service; or, if that is cast aside, we may claim, with Mrs. Wallace, that some woman has gone down into the valley of the shadow of death for every soldier that ever was born, and that is commensurate service.

REMARKS OF MISS HELEN MORRIS LEWIS, OF NORTH CAROLINA

The next lady introduced to the committee was Miss Helen Morris Lewis, of North Carolina. She said:

GENTLEMEN OF THE COMMITTEE: I am here in the interests of the women of North Carolina to petition that we be granted equal rights with men. In our State women are accorded no suffrage whatever; they are permitted to hold no political offices, and many of the laws are detrimental to our welfare.

It should be the duty of every civilized government to place a safeguard around individual liberty, by allowing its people to have a voice to protect their interests.

Ambassador Bayard says: "The result of the destruction of personal freedom is the enfeeblement of the moral fiber and the paralysis of individual, intellectual, and moral growth." These remarks were forcibly illustrated to me a short time since. I lost railroad connection and found myself stranded at one of our remote towns. I resolved to make the most of my time by delivering an address on woman suffrage.

To accomplish this purpose it was necessary for me to visit every house in person and acquaint the inmates with my intention.

I found the men on the village square quite intelligent. The idea of giving the ballot to women was a novelty to them, but they soon hobnobbed together in front of the post-office and harangued every phase of the question with much spirit and hilarity. I felt quite encouraged at this wide-awake community, and with renewed energy started forth on my tour amid domestic life.

Have you ever visited the poorhouses of our great cities and noticed the pallid hopelessness, the sodden indifference depicted on every countenance?

Well, in an intensified degree was that hopelessness and indifference written in every line of the women's faces I met that day. They were all very poor; they had swarms of children; they were yellow and skinny, hollow-eyed and lantern-jawed, and their hair grew like drought-smitten timothy. Into each separate head I hammered woman suffrage for a solid half hour, dwelling upon the advantages it would bring to their condition. But it was pitiful to observe the feeble ray of intelligence that struggled through their torpid brains. Their bovine vacuity of expression betokened lives devoid of all interest, much less enlightenment. Imprisoned within the walls of homes that contained no comforts, much less luxuries, even the joys that should accompany motherhood had been perverted into sorrow and bitterness.

I contrasted the lives of the men on the square with those of the women. The butcher, the blacksmith, the shoemaker, amid all their grime and drudgery, had an air of self-respect; they felt that they were of importance in the world; they met together, talked on the vital questions of the nation, had ambitions as great as those of Cardinal Wolsey. The men never talked to the women, but went home only to gobble and sleep. Their wives' opinions were perfectly worthless, so they were left to a withering decay of their mental faculties.

When I ponder on the cheerful insensibility of men to the shadowed existence of women, it reminds me of an incident connected with a friend who was ill. Her little boy was rubbing her arm, when she moaned, "Oh, Tommy, mamma's so sorry she's such a trouble to you!" Tommy cheerfully replied, "Never mind, mamma; we doesn't care how much you suffer so long as you is just alive." [Laughter.] Such men as these are but Tommys of a larger growth; they don't care how much we suffer; they think women have sufficient privileges given them in being allowed to be just alive. Now, gentlemen, there are thousands of such women as these all over the country. Do they tend to the world's advancement? Are they fit to rear intelligent citizens and to mold the characters of future generations that shall be an honor to our Republic?

These women in being deprived of the ballot are shut off from one of the greatest educational methods. If they were voters, their husbands would respect their opinions, and instead of spending their time

gaining outside constituents would be gaining constituents by their own firesides. Think not that this change would unsex women; there would have to be a new creation for the feminine to become masculine, for the mother to forget her offspring or turn a deaf ear to the supplications of the weak and helpless. Women's brains and characters can develop; their nature is unchangeable. Even the fiercest and most tumultuous surroundings never alter the innate gentleness of certain men. Days of desperate carnage never made Stonewall Jackson forget his highest duty, as leaning on his musket in the starlit night he held communion with his God. A hundred battlefields never hardened General Lee, as with a heart pierced by a thousand sorrows he surrendered the sword of the lost cause at Appomattox. Such men as these never lose the innocence and gentleness with which they lisped their prayers at their mother's knees; neither can political affairs make women false to their inborn instincts or lose one atom of the soft, loving tenderness that God has implanted in their breasts.

When women's opinions are counted as well as men's, it will only be adding fresh dignity and respect to the home; it will only be opening the darkened windows and letting the sunshine of enlightenment nurture the nurseries of our nation. Voting will never lessen maternal love. Office holding will never smother conjugal affection. The hardest problems of government will never shatter love's young dream.

Gentlemen, in the name of these women of my State, and for the betterment of the wives, mothers, and daughters of our land, I implore you to use your influence for our enfranchisement.

REMARKS OF MRS. SOUTHARD, OF OKLAHOMA.

GENTLEMEN OF THE COMMITTEE: I am a home woman, and not a speaker. But among the busy cares of my home I have time to think of justice and to know that the withholding of the franchise from women is a wrong done us. And other women of Oklahoma see the same truth. Now we are organized and are a part of the great band of women in this nation asking for enfranchisement. That is the message I bring from Oklahoma to the national capital.

Rev. ANNA H. SHAW. Our women are arduous workers, many of them; and there are many of them public speakers. But some of them have never been called out to speak in public upon the conditions of the women in this country, and especially upon the political questions of the day. But we have a great many orators among us, orators who began their careers at curtain lectures and end on the stump.

MRS. LUCRETIA L. BLANKENBURG, OF PENNSYLVANIA.

The next lady introduced was Mrs. Blankenburg, of Pennsylvania. She said:

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: Pennsylvania, I have no doubt you remember, was bought by William Penn of the Indians for the purpose of establishing a holy experiment—that of universal liberty to the people that settled there. And I, as a home maker and descendant from these people, come here to-day to ask you to help us make our homes what we desire. Pennsylvania is noted for her homes. She stands at the head of the list in the United States. We are noted as housekeepers and home makers. We only have one little opportunity to try our hand in politics, and that is on the school board. We do not have the right to vote for women as school directors,

but if we can secure the courtesy of the men we may be elected to school boards.

At a recent meeting held in our State, the State school superintendent said that he desired that women should be put on the school boards wherever it was possible, and gave as his reason that mothers looked after the interest of the children, and wherever there were women on the school boards things were attended to properly. The schoolhouses were kept clean, the text-books were revised, and repairs were looked after.

Now, to make one practical illustration. I live in Philadelphia. We have there several large clubs whose object is to look after the welfare of the city. We have the Women's Health Protective Association, the Civic Club, and others, with from 500 to 600 members each. We have tried in vain to get better water to drink. We have petitioned, we have had hearings before council committees, and, gentlemen, we have come to the conclusion that the word influence does not apply to politics. We have held public meetings. It is all of no avail. Our health protective association has investigated all manner of filtration systems and presented a system that has proved good elsewhere, and yet our city fathers tell us "there is no money that can be used to try filtration at present."

We are tired of waiting for clean water, clean streets, and a wholesome city. We have petitioned to our city fathers, we have gone to Harrisburg and asked for a constitutional amendment to give us the ballot. Now we come here to you as the last resort, and we ask you to put us in such a position that we can protect our homes and make them as they ought to be.

REMARKS OF MISS MARY N. CHASE, OF VERMONT.

The next speaker introduced to the committee was Miss Mary N. Chase, of Vermont. She said:

Phillips Brooks said that the enfranchisement of woman was simply a question of justice. We women claim that the fundamental principles of the Declaration of Independence are our heritage as well as of man, our brother. Some of the leading statesmen in this country and England have said that the protection of life, liberty, and happiness can be secured only through the ballot. Do you claim that the broadest life, the largest liberty, are ours when we are considered as perpetual minors and are placed on the same political basis as criminals, insane, and idiots?

One thought was clearly brought out at the national convention upon which too great emphasis can not be laid. That is, that the strength, the stability, of a nation depends largely upon the recognition of this grand principle—the right of the individual to develop every God-given faculty and to exercise every power according to the dictates of his or her own conscience.

Thousands of women in this great Republic of ours believe that it is their duty as well as their right to have a voice in the government under which they live and whose laws they have to obey. This love of liberty, this desire for justice, which is thrilling the hearts of the earnest, thoughtful women of to-day, is a spark of the same Divine fire that has led thousands upon thousands to lay down life itself, if need be, for love of country, for the uplifting of humanity.

The fact that man and woman are so constituted that each can represent only one half of the human unit is proof positive that neither was ever intended to usurp authority over the other. There are many

questions of vital interest to woman and the home which it is utterly impossible for man to look at from the woman's point of view. Hence arises great injustice to woman. Not because men are bad, but because they have their limitations, and can not, therefore, legislate justly for the whole human family. If woman had always held the reins of government, doubtless man would have equal cause for complaint.

Never until the Divine edict is obeyed, until the man and the woman, equal but different, standing side by side, rule and have dominion over the earth, can we, with any show of reason or justice, claim that this is a government of the people, by the people, and for the people.

Rev. ANNA H. SHAW. Mr. Chairman, now we go from Vermont down to Virginia, and so we come to you from all over the Union. The word of Virginia will be voiced by Mrs. Orra Langhorne.

REMARKS OF ORRA LANGHORNE, OF VIRGINIA.

Mr. CHAIRMAN AND GENTLEMEN: As a citizen, a native, and a resident of Virginia, I am here this morning representing a number of Virginia women, to request that when the sixteenth amendment is reported from the Judiciary Committee, you will do all in your power to secure its passage.

While we acknowledge courtesy and chivalry on the part of the men of Virginia, yet they still demand of us money for taxes without giving us the corresponding representation. They refuse us admittance to, and the benefit of, the highest and best institutions of our State, which are supported by State funds. They hold us amenable to the laws which we have no voice in making; they still deny us the advantage of earning a living in the higher professions, and deny us admittance to the learned professions even after we have been allowed to fit ourselves in spite of great obstacles for earning a living in that way. Therefore we request that the ballot be given us in order that we may protect our interests as American citizens; and we believe it will be greatly to the advantage of the administration of public affairs in our own State, and we are determined that it shall be given to us.

REMARKS OF VIRGINIA D. YOUNG, OF SOUTH CAROLINA.

GENTLEMEN: As a native and lifelong resident of South Carolina, I claim to represent her, and wish to call your attention to certain conditions in my State which imperatively demand for their amelioration and care the ballot in the hands of her women.

In the late constitutional convention it was admitted that we suffered frauds in our elections, and the committee on suffrage worked hard, devoting all its energies to concoct some plan by which white supremacy might be attained without trenching on the fifteenth amendment to the United States Constitution.

The plan finally resolved upon does not absolutely insure honest registering and honest elections. And therefore it has not solved the problem of giving a sense of protection and satisfaction to all our citizens. The truth is, the frauds that have prevailed in elections in my State constitute the taproot of lynchings and mob rule. Our negro population cherish a deep sense of being defrauded of their rights at the ballot box, and the sense of wrong among the more intelligent is communicated to the more brutal among them, and they, acting on the spur of deadly hatred, wreak their vengeance on the helpless and innocent. Rape and murder *and house burning* all recur again and *again, perpetrated by these ignorant people.*

Gentlemen, give the women of South Carolina the ballot, with a property and educational qualification, and they will outnumber the negro voters so that these people's ballots can be honestly counted.

I believe from my heart that woman suffrage in South Carolina will settle straightway the present strained and uneasy relations between the races and stop the brutal crimes to punish which our impulsive white citizens take the law into their own hands and horrify the best people in our State, as well as the outside world, by lynching.

REMARKS OF MRS. LILLIE DEVEREUX BLAKE, OF NEW YORK

The next lady introduced to the committee was Mrs. Lillie Devereux Blake, of New York. She said:

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: I desire to say one practical word. We are here to urge you to report favorably from your committee the constitutional amendment providing for woman suffrage which you now have before you. We earnestly hope that you will use your influence to secure a vote on this question in the Senate. Even if we are to be defeated, we still desire a roll call, so that we may know where every man stands on this vital question.

If I am to add a word more, after all the able arguments to which you have listened, I will relate an incident in connection with the majestic figure that crowns the Dome of this Capitol. It is a statue of Liberty, although there has been some confusion in regard to it because of the costume. It has been supposed to be Victory or Justice. Jefferson Davis was chairman of the committee which considered the designs submitted for the statue. They had various degrees of merit, but all of them represented Liberty wearing the Phrygian cap. Mr. Davis objected to this. He said that the Phrygian cap was given to the emancipated slaves of Greece to prove that they had been set free. Our American Liberty is freeborn. She wears no cap indicating that she was once a slave, but is armed with helmet and spear and shield, to show that she has always been free and is prepared, if necessary, to defend her freedom.

Alas, gentlemen, when the women of this country are enfranchised they will wear the Phrygian cap; only future generations will be freeborn.

Senator PEFFER. I would ask the ladies present, through their chairwoman, whether there is any appreciable increase, taking the country over, in the number of women who are enrolling themselves in your ranks?

Rev. ANNA H. SHAW. Yes, sir. The reports brought to our convention this year show not only an increase in the number of those who accept our theory, and who, therefore, are all democratic, but also in the number of home makers working for the cause in their own particular States of the Union. For the first time in the history of our cause we have representatives from every State and nearly all of the Territories in our convention, and every State in our Union is organized, with a State society with members who are actively working in our interest.

Senator PEFFER. That is the only question I wish to ask.

The CHAIRMAN. Are there any other ladies who desire to be heard? We would be very glad to hear from any of you.

Rev. ANNA H. SHAW. We cut their time down, Mr. Chairman, because of the shortness of the time. But now we learn that several are unavoidably absent from our meeting to-day and are not here to represent

their States, and so we have a little time left which we did not at first expect to have, as they did not report that they would not be here, I would like to say a word or two in the line which was suggested by Mrs. Miller and Mrs. Blankenburg, of Philadelphia, Pa. You see, we do not all agree among ourselves any more than do the members of the Senate agree among themselves. Mrs. Miller said it was treason—and I think it was treason—when she remarked that the brains of men are stronger than those of women, and that men are harder workers than women, in the main.

In regard to the first proposition there is still a little doubt. Women have not had all the educational advantages of the men, save with a few exceptions. It is only within the last half century that the conditions have materially improved.

In the past centuries, when they had no such opportunities, there were rare exceptions which showed the strength of woman's brain, and with only a few instances was the development of her brain possible from lack of educational advantages. A thousand years from now Mrs. Miller may be able to make her statement with some degree of accuracy, but not now. But in regard to the other proposition, I doubt if there is one of us—except Mrs. Miller—who will admit that men are better workers than women. They do a better kind of work than women; but they strike for eight, ten, and twelve hours a day, and we would be glad to strike for eighteen. We can work in almost every calling. Women are usually wanted where good work is needed, but every effort is made to keep them at work which does not allow the development and growth of their intellectual powers and enjoyment of life which comes to men in every walk of life.

These women toil year in and year out without any kind of compensation. Nearly all the women of the United States, or a large majority of them, work from one year's end to the other without any salary whatever; and I doubt very much if men received for their toil what we women of the world receive for ours whether they would toil as earnestly as do the women of the world to-day, who receive no salaries save a home and affection, and sometimes they lack both home and affection.

Mrs. Blankenburg spoke of the municipal government and how it was neglected in certain departments, not because men willingly neglected things, but because men are incompetent to transact all the affairs of government. For instance, take my own city government; it is a corporation come together for the good of the whole.

I do not say that women are better than men, but certainly we are better housekeepers than men.

During certain seasons of the year—and it is not necessary to say when it is—the wind blows down the street on which I live and the dirt of a week's accumulation is scattered in every direction; so that it is a very dusty street when it is dusty. The gentlemen who have in charge the city in which I live have put the sweeping of the streets in the hands of a man who makes it a rule to sweep the streets on Tuesday. Of course the dust comes into our houses and we are covered with it; and just as the housewife has again gone through the process of cleaning her house, on Wednesday the ash man comes through the streets. We put our ashes and débris on the sidewalk in suitable receptacles awaiting his coming, and in the meantime the wind blows again and the ashes and paper are again blown into our houses. The streets are swept on Tuesday and the ashes are gathered on Wednesday.

That is a specimen of man's political housekeeping. Now, I am

quite sure that if women were in our city government and had charge of the sweeping of the streets we would, with proper order, have the ashes taken up on Tuesday and the streets cleaned on Wednesday. That is only a sample of how the political works of our cities are carried on by men who hold that women do not know how to take care of city government, and is a fair example of what men would be as housekeepers. Probably if one of these men tried to sweep the stairs he would begin at the bottom. In every department of life women have shown themselves capable of taking care of the duties assigned them and to have done most excellent work.

I own a little stock in a bank in my city and have the same rights as any of the men who own stock there, and my voice goes as far as that of any other equal shareholder. I have a little stock in the railway, and the same is true of that. I own a cranberry bog; the same is true of it also. My vote there goes as far as anyone else's.

Now, this is not so in the city government; we are taxed to help support it, but we have no voice in its management. And this is the state of affairs, and its logic is beyond the mind of a woman to grasp. And it is the righting of this wrong which we ask at your hands. We ask the right to vote and to undertake the duties which we are willing and anxious and able to perform. We ask it that it may be beneficial to us as it has been to you.

It will be better for the women, and possibly it will make you better, nobler, and grander men; and so also it will be better, for the State and for the nation. In the discharge of their political duties we believe the community would be benefited, and all good men and good women of sound and strong minds will agree with me that it will be better for our industries, and make men and women better, law-abiding citizens. If the men and women unite, it will be a great deal better for our welfare than to have men make laws by themselves while women stand by as outsiders. We ask this privilege, or right, or duty, whichever it may be; and, gentlemen, we ask you in the name of the women of the United States to report this bill and, if possible, to bring it to a vote; and we also ask you—if it will be possible, and we believe it is—to grant us this power.

We thank you for your courtesy and kindness during the hearing and trust that our prayer may be granted.

The CHAIRMAN. I only desire to say, ladies, that we are very glad to see you here, and that your remarks will be printed and laid before the members of the Senate.

Senator PEFFER. Before retiring I wish to say that I am not only glad to see you here, but I am glad to be here myself. [Applause.] First of all I owe you an apology, or, rather, an explanation. My early absence was not because of tardiness; it was because I did not know the meeting was called for this particular hour. As soon as I received word by telephone I dropped everything and came as fast as I could; and that was pretty fast for a 20-year-old boy. [Laughter.]

Now, I wish to say a word by way of encouragement to you. In the first place, I believe that what you ask is fundamentally right. Those of you who have studied the history of social development understand very well how your degradation in past years has come about. Originally what little there was of government was of a paternal, patriarchal character, of men only—the old man, the head of the family; the next oldest followed, and from him on down. The rest of the children were slaves, both boys and girls. Eventually, in the evolution of society, conditions were changed, until now we find you where you are. I have

no time to go through the details, and the principles you understand as well as I do.

Now, take the social affairs of every married man, and there are a good many of them. At one period in his life he went out among his fellow men and women and searched for himself the best woman in the world and he made her his wife; who, allowing him to be the judge, was the best woman in the world. At that time he would not have been willing to exchange that girl for all the rest of the girls in Christendom. As years passed along he and his little wife became the father and mother of a family. Who does the most governing in that family?

One good woman here a little while ago spoke about the field in which a mother learns to govern. And instinctively I respond to her truthful statement, It is the best field in the world. I ask who it is that does the greater part of the governing? Who is constantly in attendance upon the little ones? Now, can it be true, after her children have grown up to maturity and have gone out in the world among their fellows, that the mother's interest in them is lost? Can she not see more of them?

I wish to say, in conclusion, that I do not believe that we can do without you much longer in the affairs of government.

Senator HOAR. I will not undertake to discuss this question in the few minutes that remain. I have made a great many speeches in favor of woman suffrage in my time. I was not able to be present at the hearing this morning, owing to another engagement, and have only heard the last part of what Senator Peffer has said. I will not say to you that he has persuaded me to be a convert, but that he has almost persuaded me to be a Populist, if all the sentiments he entertains are as wise as those.

The chairman declared the hearing closed.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 158.

IN THE SENATE OF THE UNITED STATES.

MARCH 11, 1896.—Referred to the Committee on Claims and ordered to be printed.

Mr. MITCHELL, of Oregon, presented the following

PAPERS RELATING TO THE APPLICATION OF COL. WILLIAM P. CRAIGHILL AND COL. GEORGE H. MENDELL AND MAJ. JAMES C. POST TO BE ALLOWED TRAVELING EXPENSES, ETC., WHILE TRAVELING IN EUROPE UNDER ORDERS.

TREASURY DEPARTMENT,
SECOND COMPTROLLER'S OFFICE,
Washington, D. C., September 19, 1890.

SIR: I have the honor to acknowledge the receipt of your letter of September 15, 1890, submitting for consideration and decision certain questions touching the accompanying vouchers therein mentioned pertaining to settlement 4986 of 1890 of the accounts of Col. William P. Craighill, Corps of Engineers, United States Army, and also inviting attention in that connection to the inclosed letter of said officer to you, dated September 2, 1890.

The river and harbor act of August 11, 1888 (25 Stat. L., 430, 431), authorized and directed the appointment, by the Secretary of War, of a board of three engineers from the United States Army to examine and report upon the feasibility of overcoming the obstructions in the Columbia River, Oregon, at The Dalles and Celilo Falls and the intervening rapids, by means of a boat railway, and appropriated the sum of $15,000, or so much thereof as might be necessary, to defray the cost of making said examination and survey and the expenses of said board. Col. George H. Mendell, Col. William P. Craighill, and Maj. James C. Post, Corps of Engineers United States Army, were appointed said board, in accordance with the provisions of the aforesaid act.

In his orders, dated February 23, 1889, the Hon. William C. Endicott, Secretary of War, directed said board to proceed at an early date to various points in Europe for the purpose of obtaining drawings and other information concerning the latest improvements in canal locks and gates and substitutes, such as inclined planes, hydraulic vertical lifts, and ascertaining their adaptability in solving the problem under discussion.

In the same orders, the Secretary of War also directed the following:

> The absence of these three officers shall not exceed three months, during which time they shall report monthly their station and address to the Chief of Engineers, and in addition to their usual allowance at their regular stations, shall receive mileage for travel, and allowance of two rooms each, to cost for hire not exceeding $2 per day for each room, and during the period of the absence of these officers, their mileage and hire of additional rooms shall be paid from the sum appropriated for the expenses of the board, and the officer disbursing the same is hereby authorized to expend it without drawing checks on any United States depositary, and may transport his funds by the medium of letters of credit.

The moneys appropriated by the aforesaid river and harbor act were to be expended under the direction of the Secretary of War, for the construction, completion, repair, and preservation of the public works therein named.

The appropriation "Examination and survey of Columbia River," $15,000 in amount, was, by the terms of the act "to defray the cost of making said examinations and surveys and the expenses of said board."

As stated in your letter, the vouchers therein mentioned (4, 5, and 6, April; 4, 5, and 6, May; 5, 6, and 7, June; and 41, 42, and 43, July, 1889, under the aforesaid appropriation, aggregating $1,064, were disallowed on difference sheet No. 1037, pertaining to settlement No. 4986 of 1890, for the reason that the officers to whom the payments represented on said vouchers were made, having been allowed commutation of quarters at their regular stations during temporary absence on detached service, there was no authority of law for an additional allowance for their personal use.

In his letter dated September 2, 1890, in reply to yours of August 18, 1890, inclosing the above-mentioned difference sheet, Colonel Craighill inquires as to "what law is contravened by the order of the Secretary of February 23, 1889."

The answer is that section 1765 of the Revised Statutes of the United States is contravened by said orders. Said section reads as follows:

> No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

The salary, pay, and emoluments of the three officers aforesaid having been fixed by law and regulations, no additional pay, extra allowance, or compensation, in any form whatever, for any service or duty whatever, can be allowed them, unless the same is authorized by law and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation. The $1,064 paid to these officers was paid to them as allowances additional to their usual allowances at their regular stations under an order which was issued in violation of law, namely, section 1765 of the Revised Statutes.

The allowance to each was not in any event to exceed $4 per day, and the full allowance, neither more nor less, was paid to each for every day apparently possible under the orders. This maximum allowance was made to each member of the board ostensibly for the purpose of hiring two rooms, which were designated in the order "additional rooms;" that is, rooms additional to those allowed to him by law and regulations. Not a single receipt, however, is given by any owner or proprietor of any room for any amount received from either officer as payment for the hire or rent of rooms for any portion of the time charged for. The conclusion is, therefore, irresistible, that, by an Executive order rather than by authority of law, additional pay, extra allowance, or compensation was allowed, notwithstanding the fact that the same was not authorized by law and that the appropriation under which the disbursement was made, does not explicitly state that it is for such additional pay, extra allowance, or compensation.

The appropriation in question was no more available for additional pay, extra allowance, or compensation of the members of the board than it was for their pay proper and their regular allowances or emoluments, which are fixed by law and regulations, and are otherwise provided

for, because none of those items are in any proper sense included in the cost of making the aforesaid examination and survey, or in the expenses of the board appointed for that purpose. The disallowance of the vouchers under consideration, amounting to $1,064, is accordingly reaffirmed, and prompt notification thereof to the disbursing officer recommended.

Very respectfully,

B. F. GILKESON, *Comptroller.*

Hon. W. H. HART, *Third Auditor.*

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., March 3, 1896.

DEAR GENERAL: At our recent interview you kindly said you would advise me as to the best course to pursue to relieve myself, Colonel Mendell, and Major Post of a certain disallowance which is explained by the inclosed copy of a letter of Comptroller Gilkeson of September 19, 1890.

I would be glad to have your advice on the points raised by the following questions and to have any suggestions from you which would help. It is probable I may seek relief from Congress.

When this allowance was made under the head of "additional rooms," was the allowance of quarters, or commutation therefor, fixed in any way by law, or was it simply a matter of regulation by the Secretary of War?

If of regulations, does not a special order from the Secretary of War, who made the regulations, override a general regulation?

When this allowance was made (1889) was not the allowance for commutation of quarters different in different localities? This was certainly the case at one time, but this allowance has also varied at the same places at different times under regulations of the Secretary of War.

Very respectfully and truly, yours,

W. P. CRAIGHILL,
Chief of Engineers, U. S. A.

Gen. T. H. STANTON,
Paymaster-General, U. S. A.

WAR DEPARTMENT,
Paymaster-General's Office, Washington, D. C.

The number of rooms to which an officer shall be entitled is not fixed by *statute* but was prescribed by Army Regulations of 1863 (par. 1068). By section 37, act of July 28, 1866 (G. O., 56, 1866), Congress directed that the Army Regulations of 1863 shall remain in force until Congress shall have acted on a code of regulations to be prepared and submitted by the Secretary of War. Of the several codes prepared since 1866, none have ever been acted on by Congress, and the Treasury officials hold that the Army Regulations, 1863, are the only ones having the force of law. The *price* per room ($12) was fixed by statute, act of June 23, 1879. Section 1765, Revised Statutes, quoted by the Comptroller, is, in effect, the same as Army Regulations, 1003, 1863, but Army Regulations, 1007, 1863 (the legal code according to the Treasury officials) provides that "*An officer shall have credit for an expenditure of money or property made in obedience to the order of his commanding officer. If the expenditure be disallowed it shall be charged to the officer who ordered it.*"

The river and harbor act of August 11, 1888, appropriated $15,000 to defray the cost of examination and survey and the expenses of the board. In pursuance of the intention of the act, the Secretary of War held it necessary for these officers to proceed to Europe to obtain information necessary to the execution of the project, and presumably, considering that the officers would undoubtedly be subjected to a

greater expense for the hire of rooms than their regular allowance would cover, directed the allowance in question. It seems clear that the Secretary, in thus endeavoring to carry out the intention of Congress, was justified in authorizing the expenditure from the $15,000 specifically appropriated for the expenses of the board, and the disbursing officer of the board, obeying the instructions of the Secretary of War, is justly entitled, under Army Regulations, 1007, 1863, to have the amount passed to his credit, but if the Comptroller adheres to his decision in the case no remedy appears save by recourse to the courts or to Congress.

MEMORANDUM.

MARCH 10, 1896.

The journey to Europe was to gather information to enable an opinion to be formed as to the proper treatment of one of the most difficult and expensive problems of engineering in the country, the navigation of the Columbia River at or near The Dalles. There is no other place like it probably in the world. It was proposed to pass vessels over these obstructions by inclines or hydraulic vertical lifts, in connection with a canal or a boat railway. Much progress had been made abroad in such arrangements, notably in Great Britain, France, and Belgium.

By direction of Congress a board was organized for the investigation of and report on the important subject mentioned. The Secretary of War composed the board of Colonels Mendell and Craighill and Major Post, of the Corps of Engineers. An inspection of the Columbia River was made by the board in 1888. Upon report thereafter, the Secretary of War deemed it important the board should learn what they could in Europe before submitting a final opinion. Accordingly he gave them an order for such a journey, limiting the time of their absence to three months.

As during this short absence the usual expenses of these officers, such as hire of quarters for their families, etc., continued at their proper station, from which they were not relieved, he made to each a special allowance of $4 a day, to continue during their temporary absence.

The Comptroller of the Treasury refuses to pass the accounts of these officers for this allowance, and from his decision there is no appeal except to the Court of Claims or to Congress. The amount for each is about $360. To go to the Court of Claims would be expensive and tedious. Appeal is therefore made to Congress in hope of relief, as small as the amount may seem.

One of these officers, Major Post, is now dead, and his widow and orphan child can not receive the balance of regular pay due him as long as this charge remains against him on the books of the Treasury.

Another of these officers is Colonel Mendell, now on the retired list from length of faithful and valuable service, with reduced pay.

The third is the present Chief of Engineers, who is desirous to have his accounts at the Treasury Department closed and settled, having ceased to be a disbursing officer after being so nearly forty years.

The objections of the Comptroller are *technical*. The claim is a just one. It was necessary, in the performance of the duty imposed upon the members of the board that they should see a number of improvements, often in out of the way places; that they should interview many officers and agents in charge of the works visited and inspected by them; that they should receive visits from such officers and engineers and have consultations with them; that they should treat them in a manner becoming gentlemen and American engineers; that much work of examining maps and other documents should be done, as a board, in copying papers, studying records, making calculations and estimates; translating from foreign languages, etc.

The rooms for which this special allowance was made by the Secretary of War were used as offices as well as quarters, and on the recommendation of the then Chief of the Corps of Engineers, Gen. Thos. L. Casey, who knew from his own experience in Europe that such extra expenses would be incurred. The allowance was made without the solicitation or knowledge of members of the board. It is a just claim and it is hoped that it will be allowed by Congress at its present session.

It may be borne in mind that the conditions of hotel accommodation and of travel are quite different in Europe from those in America, and that in foreign countries it is not easy to procure vouchers in accordance with the precise, formal, and inexorable requirements of the accounting officers of the Treasury Department. In every case the vouchers were signed and certified by the respective officers.[1] To show the disposition of the Board not to spend money unreasonably, it may be observed that a balance of several thousand dollars of the special appropriation was turned back into the Treasury.

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[1] Vouchers for allowance for quarters are always *signed by the officers themselves*, and so they were in this case, and *the receipts are now in the Treasury Department* and have been for years.

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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 159.

IN THE SENATE OF THE UNITED STATES.

MARCH 11, 1896.—Referred to the Committee on Commerce, to accompany S. 2487, and ordered to be printed.

Mr. MITCHELL, of Oregon, presented the following:

LETTER FROM THE SUPERVISING SURGEON-GENERAL OF THE MARINE-HOSPITAL SERVICE, RECOMMENDING THE ESTABLISHMENT OF A QUARANTINE STATION AT OR NEAR ASTORIA, OREG.

TREASURY DEPARTMENT,
OFFICE OF THE SUPERVISING SURGEON-GENERAL
MARINE-HOSPITAL SERVICE,
Washington, D. C., March 9, 1896.

SIR: I have to acknowledge the receipt of your letter of February 25, inclosing a letter from Dr. J. A. Fulton, Astoria, Oreg., calling attention to reports and recommendations that have been made concerning the establishment of a marine hospital or quarantine station at the mouth of the Columbia River, Astoria, Oreg., and asking me for my own views. The letter of Dr. Fulton relates, undoubtedly, to a quarantine station.

An effort was made in 1894 to have included an appropriation for a United States quarantine station near Astoria, Oreg., in the sundry civil appropriation bill, but, though it was included in the Senate bill, it was stricken out in conference.

I am of opinion that there should be a quarantine station at Astoria, and inclose herewith a rough draft of a bill which covers necessary points. I believe, however, that it would be more advisable to have the matter offered as an amendment to the sundry civil appropriation bill, and inclose a proposed form of amendment.

Respectfully, yours,

WALTER WYMAN,
Supervising Surgeon-General Marine-Hospital Service.

Hon. J. H. MITCHELL,
United States Senate.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 160.

IN THE SENATE OF THE UNITED STATES.

MARCH 11, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE SECRETARY OF THE INTERIOR, TRANSMITTING A COPY OF A COMMUNICATION FROM THE COMMISSIONER OF INDIAN AFFAIRS WITH DRAFT OF "A BILL TO TRANSFER THE LEGAL TITLE AND TRUSTEESHIP OF THE LANDS OF THE SAC AND FOX INDIANS OF IOWA TO THE SECRETARY OF THE INTERIOR."

DEPARTMENT OF THE INTERIOR,
Washington, March 10, 1896.

SIR: I have the honor to transmit herewith copy of a communication of the 9th instant from the Commissioner of Indian Affairs and accompanying draft of "A bill to transfer the legal title and trusteeship of the lands of the Sac and Fox Indians of Iowa to the Secretary of the Interior."

This matter has received the consideration of the Department and is presented for the favorable action of Congress.

Very respectfully,

HOKE SMITH, *Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 9, 1896.

SIR: I have the honor to acknowledge the receipt of your letter of the 3d instant, referring to office letter of the 19th ultimo (Land 6585, 1896), relative to a transfer of the legal title and trusteeship of the lands of the Sac and Fox Indians of Iowa.

In compliance with your directions, I herewith submit the facts in the case and a copy of a bill authorizing the transfer of the legal title of the lands and the trusteeship thereof from the United States Indian agent and the governor of Iowa, respectively, to the Secretary of the Interior and his successors in office.

The population of this tribe at the time of the last census, June 30, 1895, numbered 398 persons. They constitute a part of the Sacs and Foxes of Mississippi, formerly occupying large tracts of country in Wisconsin, Iowa, and Missouri, whence, under treaty stipulations, they

removed to a reservation within the present limits of the State of Kansas. After their removal to Kansas, 317 members of the tribe returned to their present location in Iowa, where they have since been permitted to remain. Under the provisions of the act of Congress of March 2, 1867 (14 Stat. L., 507), they have been receiving their share of the tribal funds.

On July 15, 1856, the legislature of Iowa passed an act permitting the Sac and Fox Indians then residing in Iowa to remain. Said act is as follows:

SECTION 1. *Be it enacted by the general assembly of the State af Iowa,* That the consent of the State is hereby given that the Indians now residing in Tama County, known as a portion of the Sacs and Foxes, be permitted to remain and reside in said State, and that the governor be requested to inform the Secretary of War thereof, and urge on said Department the propriety of paying said Indians their proportion of the annuities due or to become due to said tribe of Sac and Fox Indians.

SEC. 2. That the sheriff of said county shall, as soon as a copy of this law is filed in the office of the county court, proceed to take the census of said Indians now residing there, giving their names and sex, which said list shall be filed and recorded in said office. The persons whose names are included in said list shall have the privileges granted under this act, but none others shall be considered as embraced within the provisions of said act.

SEC. 3. This act shall take effect from and after its publication in the Iowa Capital Reporter and Iowa City Republican, published at Iowa City.

Approved, July 15, 1856.

I certify that the foregoing act was published in the Iowa Capital Reporter July 30 and in the Iowa City Republican July 23, 1856.

GEO. W. MCCLEARY, *Secretary of State.*

So far as I am aware, the above is the only act of the Iowa legislature relating to said Indians until the act of January 16, 1896, tendering to the United States jurisdiction over said Indians, and over their lands, subject to the limitations therein contained, and giving them the privilege of purchasing other lands in Tama County for Indian school purposes. Said act is as follows:

AN ACT tendering to the United States jurisdiction over certain Indians residing in Iowa, and over their lands, and the privilege of purchasing land in Tama County for Indian school purposes.

Be it enacted by the general assembly of the State of Iowa:

SECTION 1. That, except as hereinafter provided, exclusive jurisdiction of the Sac and Fox Indians residing in Iowa and retaining the tribal relation, and of all other Indians dwelling with them, and of all lands now or hereafter owned by or held in trust for them as a tribe, be, and the same is hereby, tendered to the United States, and that, as soon as the United States shall accept and assume such jurisdiction, all such jurisdiction on the part of the State of Iowa shall cease.

SEC. 2. Consent is hereby given to the United States to purchase any land in Tama County to be used for and in connection with any school or schools to be established and managed by Federal authority for the education of said Indians.

SEC. 3. Nothing contained in this act shall be so construed as to prevent, on any of the lands referred to in this act, the service of any judicial process issued by or returnable to any court of this State or judge thereof, or to prevent such courts from exercising jurisdiction of crimes against the laws of Iowa committed thereon either by said Indians or others, or of such crimes committed by said Indians in any part of this State, or to prevent the establishment and maintenance of highways and the exercise of the right of eminent domain under the laws of this State over lands now or hereafter owned by or held in trust for said Indians, or to prevent the taxation of said lands for State, county, bridge, county road, and district road purposes, and such other purposes as the general assembly may from time to time by special statute provide.

SEC. 4. This act, being of immediate importance, shall take effect from and after its publication in the Iowa State Register and the Des Moines Leader, newspapers printed and published in Des Moines, Iowa.

These Indians own in common about 2,900 acres of land in Iowa. The lands were purchased from citizens of Iowa, and were paid for

with their share of tribal funds. These purchases have been made at various times from 1856 down to October 21, 1892. About 2,480 acres of the land were deeded to the governor of Iowa, in trust for the Indians, and about 420 acres in trust to the United States Indian agent.

It only remains for me to add that the present agent of these Indians, Horace M. Rebok, esq., is of the opinion that great good will result to the Indians from the proposed change. He thinks that the lands should be apportioned among the several families, and that the remainder should be leased, and that this can better be accomplished if the title to lands and the trusteeship thereof be placed in the Secretary of the Interior.

A copy of this report in duplicate and duplicate copies of the bill are transmitted herewith, and I respectfully recommend that one copy of each be submitted to the respective Houses of Congress with the recommendation for the passage of the bill.

Very respectfully, your obedient servant,

D. M. BROWNING, *Commissioner.*

The SECRETARY OF THE INTERIOR.

A BILL to transfer the legal title and trusteeship of the lands of the Sac and Fox Indians of Iowa to the Secretary of the Interior.

Whereas the legal title of the lands of the Sac and Fox Indians of Tama County, Iowa, is in the United States Indian agent of that agency and the governor of Iowa, respectively; and

Whereas on January sixteenth, eighteen hundred and ninety-six, the legislature of Iowa passed an act tendering to the United States jurisdiction over said Indians and over their lands, subject to the limitations therein contained, and granting them the privilege of purchasing other lands in Tama County for Indian school purposes: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States hereby accepts and assumes jurisdiction over said Indians and over their land as tendered in said act of the Iowa legislature, and the United States Indian agent of the Sac and Fox Agency, Iowa, and the governor of the State of Iowa, respectively, are hereby authorized to transfer by deed of conveyance, for the use and benefit of said Indians, the legal title held by them in trust, respectively, and the trusteeship of the lands of the Sac and Fox Indians of Tama County, Iowa, to the Secretary of the Interior and his successors in office.

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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 161.

IN THE SENATE OF THE UNITED STATES.

MARCH 11, 1896.—Laid on the table and ordered to be printed.

The VICE-PRESIDENT presented the following:

LETTER FROM THE SECRETARY OF THE INTERIOR, IN RESPONSE TO THE SENATE RESOLUTION OF THE 4TH OF MARCH, AS TO THE REASON THE NONAGRICULTURAL AND UNALLOTTED LANDS OF THE UNCOMPAHGRE INDIAN RESERVATION HAVE NOT BEEN RESTORED TO THE PUBLIC DOMAIN AND PROCLAIMED OPEN TO ENTRY AND LOCATION.

DEPARTMENT OF THE INTERIOR,
Washington, March 10, 1896.

SIR: I am in receipt of Senate resolution of the 4th instant directing me to inform the Senate for what reason the nonagricultural and unallotted lands of the Uncompahgre Indian Reservation have not been restored to the public domain and proclaimed open to entry and location as prescribed by sections 20 and 21 of the act of Congress approved August 15, 1894, entitled "An act making appropriations for the current and contingent expenses of the Indian Department," etc.; and, further, to inform the Senate when, in my judgment, said lands will be opened to entry and location.

In response to said resolution I have the honor to call your attention to pages 10 and 37 of my annual report for the fiscal year ending June 30, 1895, a copy of which I herewith transmit. That report sets forth the fact that valuable discoveries of "gilsonite" have been explored by officers of the Geological Survey on this reservation since the date of the passage of the act of August 15, 1894, supra, and shows that if these lands are opened to entry in the ordinary way the Government would be deprived of extensive profits which should go into its Treasury.

The information set forth in my report with reference to the valuable mineral on said land had not been so fully brought to the attention of Congress at the date of the passage of the act providing for the restoration to the public domain of the unallotted nonagricultural lands, and in that report I recommended such legislation as would provide for the disposal of the gilsonite deposits by lease or sale to the highest bidder.

As to the time when said lands will be opened to entry and location under the provisions of the act of August, 1894, I have to state that the matter of said opening is wholly under the control of the President, and I am not at present advised as to what his intentions are in that respect.

Very respectfully, HOKE SMITH, *Secretary.*

The PRESIDENT OF THE SENATE.

[Extract from Annual Report of the Secretary of the Interior, 1895, p. 10.]

Uncompahgre Reservation.—The Commission provided for by the act of Congress was appointed to visit the Uncompahgre Reservation and to allot agricultural lands to the Indians there located. I am not prepared to concur with that portion of the report of the Commissioner in which he objects to crediting the trust fund of these Indians with the lands assigned to them. If they are given agricultural lands, as the agreement specifies, I see no reason why the credits should not be made upon the trust fund, unless the delay in the allotment is cause for complaint on the part of the Indians.

In that portion of this report which discusses the work of the Geological Survey will be found an informal report from the geologist who has examined the gilsonite upon the lands of this reservation which will not be needed for Indian allotment and which belongs to the Government. It will be seen that these deposits, while they cover only a small area of land, are of immense value.

If they are open to entry in the ordinary way a few persons will obtain them at practically no cost, and shortly thereafter they will become the property of large companies engaged in using this mineral. I believe the true policy should be for the Government to sell these deposits to the highest bidders, or else to lease them. If they are disposed of under existing law a few thousand dollars will be picked up by the enterprising men who first go upon them, and then enormous profits, which at least in part should go into the Treasury of the Government, will be made by the companies organized to operate them.

I recommend the passage of such legislation as will provide for the disposal of the gilsonite deposits by lease or sale to the highest bidder.

[Extract from Annual Report of the Secretary of the Interior, 1895, p. 27.]

Mineral deposits on Uncompahgre Indian Reservation.—Mr. Eldridge, of the Survey, was detailed informally to examine the mineral resources of the Uncompahgre Indian Reservation. He reports that gilsonite is the only mineral of known commercial value occurring on the reservation. He finds a number of large veins varying from 4 to 12 feet in width and of unknown but evidently considerable depth, from their geological relations. This indicates a vast deposit of gilsonite.

The bituminous shale, sandstone, and limestone might be of commercial value under favorable conditions for transportation. Practically the same materials elsewhere are employed either for paving purposes or made to yield up their hydrocarbons as commercial oils.

The gilsonite occurs as the filling of extensive cracks in the earth's crust. The deposits are therefore fissure veins. They are all nearly or quite vertical, and their general trend is north 45 degrees to 55 degrees west, a direction common to many of the folds in the mountain and plateau regions adjoining.

The number of important veins of gilsonite at present known is six—four in the eastern half of the reservation, one probably crossing the western edge of the reserve near the fortieth parallel, and one in the opened strip between the Uncompahgre and Uinta reservations, near Fort Duchesne, the southeastern end of which perhaps lies within the Uncompahgre Reserve.

Of the four veins in the eastern half of the reservation, one—the Black Dragon—is exposed on a tributary of the West Fork of Evacuation Creek, 20 miles south of White River, near the parallel of 39° 45′. This vein may be traced to the head of Asphalt Creek, and has a known length of between 3 and 4 miles. Its width at an opening near the southeastern end of the fissure as exposed is 8 feet 6 inches; from this point southeastward the diminution in size is very rapid.

The second and third veins in the eastern portion of the reservation are known as the "Little Bonanza" and "Big Bonanza," the former to the west of the latter. They are approximately parallel, and from 200 to 500 feet apart. They were traced to the north of White River for nearly 3 miles, and Mr. McAndrews, of the Indian police, states also that he has followed them southeastward across the river quite to the Colorado line, in all, a distance of 10 or 12 miles. The maximum width of the Little Bonanza observed was 9 feet, of the Big Bonanza 13 feet 6 inches, but locally the Little Bonanza exceeds the Big Bonanza in width.

The "Cowboy," the fourth and largest of the important group of gilsonite veins in the eastern portion of the reservation, lies about 2½ miles northeast of the Bonanza veins, with which it is parallel. This vein has thus far been found only north of the river, but it here has a probable length of at least 5 miles, being clearly defined in outcrop for over half this distance, while for the remainder evidences of its presence exist in the float particles found in the soil and wash covering it. The maximum thickness of this vein was found to be 18 feet.

The thickness of the veins varies from the figures given above to 0 at the ends, and they are observed to widen and contract from point to point; but for much of the lengths given they appear to maintain an excellent workable width, from 4 to 12 feet.

The vein on which the St. Louis Gilsonite Company have opened a mine, lying 3 miles east of Fort Duchesne, is the original discovery. It is of the same nature as those already described, but is only about 4 feet wide, a width, however, held with little variation for between 1 and 2 miles, possibly even farther. The vein near the western edge of the reservation has not yet been visited.

The discovery of such veins is a matter for the prospector rather than for the geologist, as the position of a crack in broad and gently folded strata is undeterminable by any structural laws.

The amount of gilsonite in the region examined is enormous, for the depth of the fissures, though unknown, can not but be considerable—from 1,000 to several thousand feet—and, with their length and width, is indicative of phenomenal yield.

The presence on the Uncompahgre Reservation of minerals other than that already referred to is extremely questionable, particularly so in the case of the metallic ores—zinc, lead, copper, silver, gold. The entire area of the reservation, so far as a general survey and the evidence of earlier explorers (Hayden and others) show, is one of unaltered sedimentary rocks of Eocene age, devoid of all traces of eruptive action past or present.

The Survey has also contributed valuable assistance to other bureaus of the Department in reporting as to the feasibility of irrigation at designated points and in the examination of alleged mineral deposits.

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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 162.

IN THE SENATE OF THE UNITED STATES.

MARCH 12, 1896.—Laid on the table and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ACTING SECRETARY OF THE TREASURY, INCLOSING A COMMUNICATION FROM N. L. JEFFRIES, ATTORNEY FOR THE NORTH AMERICAN COMMERCIAL COMPANY, LESSEE OF THE ISLANDS OF ST. PAUL AND ST. GEORGE, ALASKA, PROTESTING AGAINST THE PROPOSITION TO DESTROY FUR SEALS BY ORDER OF THE UNITED STATES, AS CONTEMPLATED BY BILL 3206, WHICH RECENTLY PASSED THE HOUSE.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 11, 1896.

SIR: The inclosed copy of a communication, dated the 4th instant, from N. L. Jeffries, attorney for the North American Commercial Company, lessee of the islands of St. Paul and St. George, Alaska, wherein protest is made against the proposition to destroy fur seals by order of the United States, as contemplated by bill 3206, which recently passed the House of Representatives, is referred for your information.

Respectfully, yours,

S. WIKE, *Acting Secretary.*

The PRESIDENT OF THE SENATE.

WASHINGTON, D. C., *March 4, 1896.*

SIR: On the 25th ultimo the House of Representatives passed a bill (No. 3206) which authorizes in a stated contingency the total destruction of the fur-seal herds on the islands of St. Paul and St. George, in Alaska.

On behalf of the North American Commercial Company, the lessee of the right to take fur seals on said islands, I respectfully submit that said company, under the terms and stipulations of its contract with the United States, has the exclusive right to engage in the business of taking fur seals for their skins on said islands for the period of twenty years from May 1, 1890, which said contract is subsisting and remains valid and in full force and effect.

Therefore the said North American Commercial Company, by the undersigned, its attorney, respectfully submits this its protest against the destruction of said fur seals or any of them by the United States as proposed by the said bill, or in any other manner whatsoever.

THE NORTH AMERICAN COMMERCIAL COMPANY,
By N. L. JEFFRIES, *Its Attorney.*

The SECRETARY OF THE TREASURY.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 163.

IN THE SENATE OF THE UNITED STATES.

MARCH 12, 1896.—Referred to the Committee on Appropriations and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ACTING SECRETARY OF THE TREASURY, TRANSMITTING AN ESTIMATE OF APPROPRIATION—$3,130—FOR SETTING UP AND OPERATING TWO PORTABLE STEAM SAWMILLS ON THE NEZ PERCE INDIAN RESERVATION, IDAHO, INCLUDING TRANSPORTATION OF MILL MACHINERY FROM THE AGENCY TO THE MILL SITES, AS SUBMITTED BY THE SECRETARY OF THE INTERIOR AS AN AMENDMENT TO THE INDIAN APPROPRIATION BILL.

TREASURY DEPARTMENT, *March 11, 1896.*

SIR: I have the honor to transmit herewith for the consideration of Congress an estimate of appropriation—$3,130—for setting up and operating two portable steam sawmills on the Nez Perce Indian Reservation, Idaho, including transportation of mill machinery from the agency to the mill sites, as submitted by the Secretary of the Interior on the 10th instant as an amendment to the Indian appropriation bill now pending.

Respectfully, yours,

S. WIKE,
Acting Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 6, 1896.

SIR: I have the honor to invite the attention of the Department to the following provision contained in the agreement with the Nez Perce Indians in Idaho, entered into on May 1, 1893, and ratified by the act approved August 15, 1894:

ARTICLE IV. It is further stipulated and agreed that the United States will purchase for the use of said Nez Perce Indians two portable steam sawmills, at a cost not exceeding ten thousand dollars, * * *

By authority contained in Department letters dated July 15, 1895, this office purchased the two portable steam sawmills for $1,680.43 each, or a total of $3,360.86.

Upon reference to the act of August 15, 1894, ratifying the agreement in question, and appropriating funds to carry its provisions into effect, it will be seen that no provision is made to cover the expense of operating these sawmills, and the agreement itself is silent on that

point. The funds accruing to the Nez Perce Indians under the agreement must, by its terms, be paid to them per capita, in cash. It is obvious, therefore, that if the Government is to bear the expense of operating the mills the necessary funds must be appropriated therefor, as there is now no appropriation applicable for such purpose.

Acting under instructions from this office, the United States Indian agent at the Nez Perce Agency has submitted the following estimate to cover the expense of setting up and operating the sawmills during the fiscal year ending June 30, 1897, viz:

To transport the mill machinery from the agency to the mill sites	$250
For salaries of two sawyers, at $720 per annum each	1,440
For salaries of two engineers, at $720 per annum each	1,440
Total	3,130

Under the circumstances I would respectfully recommend that Congress be asked to appropriate the sum of $3,130 for the purpose of setting up and operating the two sawmills mentioned during the fiscal year 1897. A form of amendment is herewith respectfully inclosed, with the suggestion that it be transmitted to Congress for consideration in connection with the Indian appropriation bill now before the Senate.

Very respectfully,

D. M. BROWNING, *Commissioner.*

The SECRETARY OF THE INTERIOR.

[Indorsement.]

DEPARTMENT OF INTERIOR, *March 10, 1896.*

Approved, and respectfully forwarded through the honorable Secretary of the Treasury for the favorable consideration of Congress.

HOKE SMITH.

NEZ PERCE AGENCY, IDAHO, *February 21, 1896.*

SIR: Replying to your communication of the 13th instant cited (Finance), I have the honor to submit the following estimate which will cover the expenses of putting up and operating the two portable sawmills during the fiscal year of 1897:

Amount required to pay freight on mills from agency to mill sites	$250
Two sawyers, at $720 each per annum	1,440
Two engineers, at $720 each per annum	1,440
Total	3,130

I would suggest that each Indian furnish the wood for fuel and perform any other labor required while the mill is in operation for his especial benefit.

The above estimate provides for running the mills only eight hours each workday, which I think will be sufficient to supply the demand.

Very respectfully,

S. G. FISHER,
United States Indian Agent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

Amendment.

For setting up and operating two portable steam sawmills on the Nez Perce Indian Reservation, Idaho, including transportation of mill machinery from the agency to the mill sites, three thousand one hundred and thirty dollars.

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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 164.

IN THE SENATE OF THE UNITED STATES.

MARCH 12, 1896.—Ordered to be printed.

Mr. HALE presented the following:

REPORT OF OPERATIONS UPON REPAIRS AND ENLARGEMENT OF THE GOVERNMENT PRINTING OFFICE AND THE ERECTION OF A FIREPROOF BUILDING UPON SITE OF THE GOVERNMENT PRINTING OFFICE STABLES UNDER THE CHIEF OF ENGINEERS DURING THE MONTH OF FEBRUARY, 1896.

FIRST. APPROVED PROJECT OF 1894, UNDER THE ACT OF AUGUST 18, 1894.

To erect three fire escapes, construct an additional story upon southwest fireproof section, erect a new five-story building between the southwest and south center sections, and thoroughly strengthen and render safe the H street section at an estimated cost of $65,000.

Money statement.

Amount available under act of August 18, 1894, as indicated by letter from Chief of Engineers, United States Army, dated October 3, 1894		$65,000.00
Amount expended during the month		38.40
Balance unexpended at end of month		30,009.83
In Treasury United States	$30,000.00	
In hand	9.83	
Outstanding liabilities at end of month		6.00
Balance available at end of month		30,003.83

SECOND. APPROVED PROJECT OF 1895, UNDER ACT OF MARCH 2, 1895.

To erect a six-story fireproof structure of brick, with steel frame, upon site of the present stables of the United States Government Printing Office.

Money statement.

[Project approved March 19, 1895.]

Amount available under act of March 2, 1895		$121,121.90
Amount expended during the month		15,295.21
Balance unexpended during the month		28,819.27
In Treasury United States	$20,121.90	
In hand	8,697.37	
Outstanding liabilities at end of month	4,654.56	
Amount covered by existing contracts at end of month	6,200.00	
		10,854.56
Balance available at end of month		17,964.71

Operations have been in progress during the month both by contract and hired labor, materials being purchased by contract except in cases of emergency.

Work upon the new structure has been pushed forward as rapidly as possible.

Three of the wire-glass in the skylight of the southwest section of the Government Printing Office, which were broken during a gale of wind, were replaced during the month.

In the new building, on site of Government Printing Office stables, the brick work has been completed except the basement areas, the outer walls cleaned and oiled down and scaffolding removed; the terra cotta arches and the fire-proofing of beams, columns, and girders has been nearly completed.

The two flights of iron stairways from the basement to the sixth story, and the iron ladders leading to attic and roof have been completed.

The tin-roof covering and gutters have been completed and painted.

The floor joists have been placed in position in the second, third, fourth, and fifth stories, the concrete placed over the arches of second, third, fourth, and fifth floors, and the flooring laid on the second floor.

All windows have been fitted except those of first story, and all have been glazed; those of the second, third, fourth, fifth, and sixth stories and the attic have been placed in position.

All the window frames above second story have been painted on the outside.

Proposals have been invited for plastering, steam heating, and for an electric elevator, and the contract for plastering awarded.

The Public Printer has requested that conduits and power cables, etc., be placed in the basement, and that some changes be made in the location of the basement stairways; his requests are reasonable and the changes deemed by him most advantageous; they were not foreseen when the original estimates were made; to comply with them will necessitate the authority of Congress to use $2,500, or so much thereof as may be necessary, of the balance remaining from the appropriation for repair, etc., of the Government Printing Office made by the act of August 18, 1894; such authority is recommended.

PROBABLE OPERATIONS FOR MARCH.

To complete fireproofing, to complete concreting over arches and lay floors, to commence and push forward plastering, to commence and push forward steam-heating plant, to continue painting, to place in position and hang all windows, and to invite proposals for plumbing and construct walls of closets in fifth story.

To have the second and third stories so far advanced as to afford storage room for supplies if desired by the Public Printer.

From 50 to 115 mechanics and laborers were employed daily during the month, the number depending upon the condition of the weather.

The structure has been pushed forward as rapidly as is consistent with first-class workmanship and first-class materials, and, unless some unforeseen contingency arises, the building will probably be completed and ready to transfer to the Public Printer the latter part of June, 1896.

Respectfully submitted.

JOHN M. WILSON,
Colonel, Corps of Engineers, United States Army.

OFFICE OF PUBLIC BUILDINGS AND GROUNDS,
Washington, D. C., February 29, 1896.

Return of officers and hired men at building for Government Printing Office, Washington, D. C., for the month of February, 1896.

OFFICERS.

Present: John M. Wilson, colonel, Corps of Engineers, in charge; John S. Sewell, first lieutenant, Corps of Engineers.

HIRED MEN.

No.	Trade or occupation.	Time or piece work.	Rate of wages.	Amount.
1	Draftsman and superintendent construction	1 month	$180.00	$180.00
1	Receiver of materials	1 month	70.00	70.00
1	Timekeeper and laborer	1 month	55.00	55.00
1	Day watchman	1 month	45.00	45.00
1	Night watchman	1 month	45.00	45.00
1	Overseer	25 days	5.00	125.00
1	Foreman tinner	11¼ days	5.00	56.25
1	Bricklayer	10⅞ days	4.50	48.87
13	Bricklayers	84¼ days	4.00	337.00
1	Stone setter	8¾ days	4.00	35.00
1	Carpenter	25 days	3.50	87.50
2	Carpenters	209⅞ days	3.00	628.12
7	Painters	46¼ days	3.00	138.75
9	Tinners	58⅞ days	3.00	176.25
1	Steam engineer	21 days	2.50	52.50
1	Carpenter	15¾ days	2.50	38.44
1	Hod carrier	8¼ days	2.00	16.25
1	Laborer	6⅞ days	1.75	11.81
2	Laborers	519 days	1.50	778.50
3	Horses and carts	16½ days	2.00	33.25
	Total			2,956.99

JOHN M. WILSON,
Colonel, Corps of Engineers, United States Army.

4TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 165.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING,

In answer to the resolution of the Senate of the 12th instant, a report from the Secretary of State, with accompanying correspondence, with regard to the claim of indemnity from Spain for the execution at Santiago de Cuba of persons who were on board the Virginius.

EXECUTIVE, B. SPECIAL SESSION OF THE SENATE.—MARCH 15, 1875.—Read, ordered that the injunction of secrecy be removed from said message and correspondence, and that it lie on the table and be printed.

JANUARY 11, 1896.—Ordered to be reprinted.

To the Senate:

In answer to the resolution of the Senate of the 12th of March instant, I herewith transmit a report from the Secretary of State, with accompanying correspondence.

U. S. GRANT.

WASHINGTON, *March* 15, 1875.

DEPARTMENT OF STATE,
Washington, March 15, 1875.

The Secretary of State, to whom was referred the resolution of the Senate of the 12th of March, 1875, requesting the President, "if, in his opinion, not incompatible with the public interests, to communicate to the Senate such information as he may deem proper with regard to the claim for indemnity from Spain for the execution at Santiago de Cuba of persons who were on board the Virginius," has the honor to report that the question of the indemnity demanded from Spain for such of the ship's company of the Virginius as were executed or detained by the Spanish authorities, and for such of the passengers executed as were citizens of the United States, has been disposed of by an agreement entered into between Mr. Cushing, the minister of the United States at Madrid, and the minister of foreign affairs, as will appear from the correspondence on the subject herewith transmitted.

Respectfully submitted.

HAMILTON FISH.

The PRESIDENT.

List of accompanying papers.

1. Protocol of conference between Mr. Fish and Admiral Polo, November 29, 1873.
2. Agreement between Mr. Fish and Admiral Polo, December 8, 1873.
3. Mr. Fish to Mr. Williams, December 11, 1873.
4. Mr. Williams to Mr. Fish, December 17, 1873.
5. Mr. Fish to Admiral Polo, December 22, 1873.
6. Admiral Polo to Mr. Fish, January 3, 1874.
7. Mr. Fish to Mr. Williams, December 22, 1873.
8. Mr. Williams to Mr. Fish, December 23, 1873.
9. Mr. Fish to Mr. Robeson, December 17, 1873.
10. Rear-Admiral Scott to Captain Whiting, December 14, 1873.
11. Captain Whiting to Rear-Admiral Scott, December 17, 1873.
12. Lieutenant-Commander Woodrow to Mr. Robeson, December 30, 1873.
13. Mr. Robeson to Rear-Admiral Davis, January 3, 1874.
14. Same to same, January 3, 1874.
15. Report of the naval court of inquiry, January 16, 1874.
16. Final report of the naval court of inquiry.
17. Mr. Fish to Admiral Polo, March 28, 1874.
18. Admiral Polo to Mr. Fish, December 30, 1873.
19. Mr. Fish to Admiral Polo, January 9, 1874.
20. Admiral Polo to Mr. Fish, February 2, 1874.
21. Mr. Fish to Admiral Polo, April 18, 1874.
22. Mr. Young to Mr. Fish, No. 109, December 18, 1873.
23. Mr. Fish to Mr. Cushing, No. 4, February 10, 1874.
24. Same to same, No. 18, April 24, 1874.
25. Mr. Cushing to Mr. Fish, No. 7, April 11, 1874.
26. Same to same, No. 9, April 20, 1874.
27. Same to same, No. 21, June 1, 1874.
28. Same to same, No. 41, June 26, 1874.
29. Same to same, No. 49, July 3, 1874.
30. Same to same, No. 59, July 10, 1874.
31. Same to same, No. 64, July 22, 1874.
32. Mr. Fish to Mr. Cushing, No. 59, August 21, 1874.
33. Mr. Cushing to Mr. Fish, No. 91, August 31, 1874.
34 Mr. Fish to Mr. Cushing, No. 80, October, 27, 1874.
35. Mr. Fish to the President, November 20, 1874.
36. British Blue Book "Spain, No. 1, (1875.)"
37. Mr. Cushing to Mr. Fish, telegram, November 25, 1874.
38. Same to same, telegram, November 27, 1874.
39. Mr. Fish to Mr. Cushing, telegram, November 28, 1874.
40. Mr. Cushing to Mr. Fish, telegram, November 30, 1874.
41. Same to same, telegram, December 4, 1874.
42. Same to same, telegram, December 4, 1874.
43. Mr. Fish to Mr. Cushing, telegram, December 7, 1874.
44. Same to same, telegram, December 11, 1874.
45. Mr. Cushing to Mr. Fish, No. 156, November 25, 1874.
46. Same to same, No. 177, December 5, 1874.
47. Mr. Fish to Mr. Cushing, No. 108, December 30, 1874.
48. Mr. Cushing to Mr. Fish, telegram, February 10, 1875.
49. Same to same, telegram, February 16, 1875.
50. Same to same, telegram, February 16, 1875.
51. Same to same, telegram, February 21, 1875.
52. Same to same, telegram, February 21, 1875.
53. Mr. Fish to Mr. Cushing, telegram, February 24, 1875.
54. Mr. Cushing to Mr. Fish, telegram, March 2, 1875.
55. Mr. Fish to Mr. Cushing, telegram, March 3, 1875.
56. Mr. Cushing to Mr. Fish, telegram, March 9, 1875.
57. Same to same, telegram, March 12, 1875.

CORRESPONDENCE.

No. 1.

Protocol of the conference held at the Department of State, at Washington, on the 29th of November, 1873, between Hamilton Fish, Secretary of State, and Rear-Admiral Don José Polo de Bernabé, envoy extraordinary and minister plenipotentiary of Spain.

The undersigned, having met for the purpose of entering into a definitive agreement respecting the case of the steamer Virginius, which, while under the flag of the United States, was, on the 31st of October last, captured on the high seas by the Spanish man-of-war Tornado, have reached the following conclusions:

Spain, on her part, stipulates to restore forthwith the vessel referred to, and the survivors of her passengers and crew, and on the 25th day of December next to salute the flag of the United States. If, however, before that date Spain should prove to the satisfaction of the Government of the United States that the Virginius was not entitled to carry the flag of the United States, and was carrying it at the time of her capture without right and improperly, the salute will be spontaneously dispensed with, as in such case not being necessarily requirable; but the United States will expect, in such case, a disclaimer of intent of indignity to its flag in the act which was committed.

Furthermore, if, on or before the 25th of December, 1873, it shall be made to appear to the satisfaction of the United States that the Virginius did not rightfully carry the American flag, and was not entitled to American papers, the United States will institute inquiry, and adopt legal proceedings against the vessel, if it be found that she has violated any law of the United States, and against any of the persons who may appear to have been guilty of illegal acts in connection therewith; it being understood that Spain will proceed, according to the second* proposition made to General Sickles, and communicated in his telegram read to Admiral Polo on the 27th instant, to investigate the conduct of those of her authorities who have infringed Spanish laws or treaty obligations, and will arraign them before competent courts and inflict punishment on those who may have offended.

Other reciprocal reclamations to be the subject of consideration and arrangement between the two governments; and, in case of no agreement, to be the subject of arbitration, if the constitutional assent of the Senate of the United States be given thereto.

It is further stipulated that the time, manner, and place for the surrender of the Virginius, and the survivors of those who were on board

*The second proposition is as follows:

Second. If it be proved that in the proceedings or sentences pronounced against foreigners by the authorities of Santiago de Cuba there has been an essential failure to comply with the provisions of our legislation or of treaties, the government will arraign those authorities *before the competent tribunals.*

of her at the time of her capture, and also the time, manner, and place for the salute to the flag of the United States, if there should be occasion for such salute, shall be subject to arrangement between the undersigned within the next two days.

HAMILTON FISH.
JOSÉ POLO DE BERNABÉ.

No. 2.

On this 8th day of December, 1873, Hamilton Fish, Secretary of State of the United States, and Admiral Polo de Bernabé, the envoy extraordinary and minister plenipotentiary of Spain, met for the purpose of arranging and determining the time, manner, and place for the surrender of the Virginius, and the survivors of those who were on board of her at the time of her capture; and also the time, manner, and place for the salute to the flag of the United States, if there should be occasion for such salute—in accordance with the stipulation in the protocol signed by them on the 29th day of November last—the time within which such arrangement was to have been made having been extended at the request of the Spanish government.

It is arranged and agreed as follows:

I. That the Virginius shall be surrendered and restored by a Spanish vessel of war to a vessel of war of the United States in the harbor of Bahia Honda on the 16th day of December instant, between the hours of eight in the morning and four in the afternoon of that day, the Virginius to have the flag of the United States flying at her main peak or flag-staff at the time of the surrender; but the fact of the vessel being restored with the flag flying shall not be taken as an admission by either party of the right of the vessel to carry the flag at the time of the capture; nor shall it prejudice the right reserved to Spain to prove, on or before the 25th of December instant, that the vessel was not entitled to carry that flag, and was carrying it at the time of her capture without right and improperly; nor the presentation of the reciprocal reclamations as provided in the said protocol. Should any accident prevent the arrival of the United States vessel in the port of Bahia Honda on the day above named, the surrender and restoration of the Virginius shall take place in the same port as soon as may be after the arrival there of the United States vessel.

II. That the survivors of those who were on board of the Virginius at the time of her capture shall be surrendered to and safely escorted on board of a vessel of war of the United States in the harbor of Santiago de Cuba within forty-eight hours after the notification to the authorities of the place of the arrival there of such vessel, and that such vessel is ready and prepared to receive such survivors. The said survivors are to be surrendered as above, between the hours of eight in the morning and four in the afternoon.

III. That on the 25th day of December current a vessel or vessels of war of the United States will be in the harbor of Santiago de Cuba, and that at the hour of 12 meridian the United States flag is to be raised on a Spanish fort or battery, and a salute of twenty-one guns be fired. This being done, the United States vessel, or, if there be more than one, one of them, will raise the Spanish flag, and return the salute, gun for gun. But if the commanding officer of the United States vessel

in the harbor of Santiago de Cuba shall, on or before that date, have received notice that the conditions have been reached on which, according to the protocol between the undersigned of the 29th of November last, the salute to the flag of the United States is to be spontaneously dispensed with, he will notify the authorities of the place of that fact, and the ceremony of the salute to the flag in such case will not take place.

HAMILTON FISH.
JOSÉ POLO DE BERNABÉ.

No. 3.

Mr. Fish to Mr. Williams.

DEPARTMENT OF STATE,
Washington, December 11, 1873.

SIR: On the 29th ultimo, at a conference between the Spanish minister and myself, it was agreed that should Spain before the 25th day of December current prove to the satisfaction of the Government of the United States that the steamer Virginius was not entitled to carry the flag of the United States and was carrying it at the time of her capture without right and improperly, then the salute which Spain was to give to the flag of the United States on that day should be spontaneously dispensed with, as in such case not being necessarily requirable. A copy of the protocol of the conference, in which this agreement is reached, is hereto annexed.

I received yesterday from Admiral Polo, the Spanish minister, a* note transmitting various documents, which, he states, prove, in his opinion, that the steamer Virginius had no right, at the time of her capture, to use the flag of the United States, and I understand this to be the evidence upon which his government relies to substantiate that fact.

The President instructs me to lay before you this note from Admiral Polo, with its inclosures, which I now do, inclosing herewith a translation of the note, and the original of the evidence inclosed in it; and I will thank you to return both these papers to this Department when you have done with them.

The President desires your opinion upon the force of this evidence, whether it does substantiate to the reasonable satisfaction of this Government that the Virginius was not entitled to carry the flag of the United States, and was carrying it, at the time of her capture, without right, and improperly.

It is proposed that the salute, should it take place, shall be made in the harbor of Santiago de Cuba. Orders have already gone to the commanders of United States vessels who are expected to be in that harbor on the 25th instant, to notify the proper Spanish officials, on that day at noon, of a readiness to receive and return the salute, unless previously informed of its waiver by this Government; and in order that a counter-order (should one become necessary) may reach there in

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*For note from Admiral Polo dated December 10, 1873, and the evidence which accompanied it, see House Ex. Doc. No. 30, Forty-third Congress, first session, page 85, *et seq.*

time, it is desirable that your conclusions on the inclosed documents should be made known to this Department as early as the morning of the 16th instant. I take the liberty, therefore, to ask that it may be furnished by that day.

I have, &c.,

HAMILTON FISH.

No. 4.

Mr. Williams to Mr. Fish.

DEPARTMENT OF JUSTICE,
Washington, December 17, 1873. (Received December 17.)

SIR: I have the honor to acknowledge the receipt of your letter of the 11th instant, submitting to me a large number of documents and depositions, and asking for my opinion as to whether or not the Virginius, at the time of her capture by the Spanish man-of-war Tornado, was entitled to carry the flag of the United States, and whether or not she was carrying it improperly and without right at that time.

This question arises under the protocol of the 29th ultimo, between the Spanish minister and the Secretary of State, in which, among other things, it is agreed that on the 25th instant Spain shall salute the flag of the United States. But it is further provided that "if Spain should prove to the satisfaction of the Government of the United States that the Virginius was not entitled to carry the flag of the United States, and was carrying it, at the time of her capture, without right and improperly, the salute will be spontaneously dispensed with, as in such case not being necessarily requirable; but the United States will expect, in such case, a disclaimer of the intent of indignity to its flag in the act which was committed."

Section 1 of the act of December 31, 1792, provides that ships or vessels registered pursuant to such act, "and no other, (except such as shall be duly qualified according to law for carrying on the coasting trade and fisheries, or one of them,) shall be denominated and deemed ships or vessels of the United States, entitled to the benefits and privileges appertaining to such ships." Section 4 of the same act provides for an oath, by which, among other things, to obtain the registry of a vessel, the owner is required to swear "that there is no subject or citizen of any foreign prince or state, directly or indirectly, by way of trust, confidence, or otherwise, interested in such ship or vessel, or in the profits or issues thereof."

Obviously, therefore, no vessel in which a foreigner is directly or indirectly interested is entitled to a United States registry, and if one is obtained by a false oath as to that point, and the fact is that the vessel is owned, or partly owned, by foreigners, she cannot be deemed a vessel of the United States, or entitled to the benefits or privileges appertaining to such vessels.

The Virginius was registered in New York on the 26th of September, 1870, in the name of Patterson, who made oath as required by law, but the depositions submitted abundantly show that, in fact, Patterson was not the owner at that time, but that the vessel was the property of certain Cuban citizens in New York, who furnished the necessary funds for her purchase. J. E. Shepperd, who commanded said vessel when she

left New York with a certificate of her register in the name of Patterson, testifies positively that he entered into an agreement to command said vessel at an interview between Quesada, Mora, Patterson, and others, at which it was distinctly understood that the Virginius belonged to Quesada, Mora, and other Cubans, and that said Mora exhibited to him receipts for the purchase-money, and for the repairs and supplies upon said steamer, and explained to him how said funds were raised among the Cubans in New York. Adolpho De Varona, who was the secretary of the Cuban mission in New York at the time the Virginius was purchased, and afterward sailed in her as Quesada's chief of staff, testifies that he was acquainted with all the details of the transaction, and knows that the Virginius was purchased with the funds of the Cubans, and with the understanding and arrangement that Patterson should appear as the nominal owner, because foreigners could not obtain a United States register for the vessel. Francis Bowen, Charles Smith, Edward Greenwood, John McCann, Matthew Murphy, Ambrose Rawlings, Thomas Gallagher, John Furlong, Thomas Anderson, and George W. Miller, who were employed upon the Virginius in various capacities after she was registered in the name of Patterson, testify clearly to the effect that they were informed and understood while they were upon the vessel that she belonged to Quesada and the Cubans represented by him, and that he navigated, controlled, and treated said vessel in all respects as though it was his property.

Nothing appears to weaken the force of this testimony, though the witnesses were generally subjected to cross-examination; but, on the contrary, all the circumstances of the case tend to its corroboration. With the oath for registry the statute requires a bond to be given signed by the owner, captain, and one or more sureties; but there were no sureties upon the bond given by Patterson and Shepperd. Pains have been taken to ascertain if there was any insurance upon the vessel, but nothing of the kind has been found, and Quesada, Varona, and the other Cubans who took passage upon the Virginius, instead of going on board at the wharf in the usual way, went aboard off a tug after the vessel had left the harbor of New York. I cannot do otherwise than to hold upon this evidence that Patterson's oath was false, and that the register obtained in his name was a fraud upon the navigation laws of the United States.

Assuming the question to be what appears to conform to the intent of the protocol, whether or not the Virginius, at the time of her capture, had a right, as against the United States, to carry the American flag, I am of the opinion that she had no such right, because she had not been registered according to law; but I am also of the opinion that she was as much exempt from interference on the high seas by another power, on that ground, as though she had been lawfully registered. Spain, no doubt, has a right to capture a vessel, with an American register, and carrying the American flag, found in her own waters assisting, or endeavoring to assist, the insurrection in Cuba, but she has no right to capture such a vessel on the high seas upon an apprehension that, in violation of the neutrality or navigation laws of the United States, she was on her way to assist said rebellion. Spain may defend her territory and people from the hostile attack of what is, or appears to be, an American vessel; but she has no jurisdiction whatever over the question as to whether or not such vessel is on the high seas in violation of any law of the United States. Spain cannot rightfully raise that question as to the Virginius, but the United States may, and, as I understand the protocol, they have agreed to do it, and, governed by that agreement and

without admitting that Spain would otherwise have any interest in the question, I decide that the Virginius, at the time of her capture, was without right and improperly carrying the American flag.

Very respectfully,

GEO. H. WILLIAMS.

No. 5.

Mr. Fish to Admiral Polo de Bernabé.

DEPARTMENT OF STATE,
Washington, December 22, 1873.

The undersigned, Secretary of State, has the honor to acknowledge the receipt of the note of Admiral Polo, envoy extraordinary and minister plenipotentiary from Spain, of the 10th instant, in which various documents were transmitted in order to establish that the steamer Virginius had no right, at the time of her capture, to carry the flag of the United States.

The documents inclosed in the note of Admiral Polo have been carefully examined, with a view to determine the duty of the United States towards Spain under the agreement recorded in the protocol of the conference between Admiral Polo and the undersigned on the 29th ultimo.

The undersigned is now directed by the President to say that the documents thus transmitted by Admiral Polo make it appear to the satisfaction of the United States that the Virginius was not entitled to carry the flag of the United States, and was carrying it at the time of her capture without right and improperly, and that orders have been given to the naval authorities of the United States to notify the Spanish authorities of Santiago de Cuba that the salute to the flag of the United States is to be spontaneously dispensed with by the United States.

The undersigned has the honor further to inform Admiral Polo that, it having been made to appear to the satisfaction of the United States that the Virginius did not rightfully carry the American flag, and was not entitled to American papers, the United States will, in accordance with the undertakings set forth in said protocol, institute inquiry and adopt legal proceedings against the Virginius, if it be found that she has violated any law of the United States, and against the persons who may appear to have been guilty of illegal acts in connection therewith, so soon as the vessel or such persons may arrive within the territorial jurisdiction of the United States.

The conclusion thus arrived at makes it unnecessary to comment upon the many parts of the note of Admiral Polo of the 10th instant to which the undersigned would be obliged to record his dissent.

The undersigned takes this occasion to renew to Admiral Polo the assurances of his very high consideration.

HAMILTON FISH.

No. 6.

Admiral Polo de Bernabé to Mr. Fish.

[Translation.]

LEGATION OF SPAIN,
Washington, January 3, 1874.

The undersigned, envoy extraordinary and minister plenipotentiary *of Spain, while having* the honor to acknowledge the receipt of the

note of the honorable Secretary of State of the United States, of the 22d of December last, in which it is declared that the Virginius at the time of her capture had no right to carry the American flag, and did carry it wrongfully and improperly, must express to the Secretary of State the satisfaction with which the government of the Spanish Republic has been informed of this declaration, and that this result, which was confidently expected, practically demonstrates that there was no offense to the American flag, and that no intention to insult it ever could or ever did exist.

The undersigned avails himself of this opportunity to reiterate to the Honorable Hamilton Fish the assurance of his highest consideration.

JOSÉ POLO DE BERNABÉ.

No. 7.

Mr. Fish to Mr. Williams.

DEPARTMENT OF STATE,
Washington, December 22, 1873.

SIR: Referring to my conversation with you on the subject of carrying out the agreements of the United States with Spain, respecting proceedings against the Virginius and against the persons who may appear to have been guilty of illegal acts in connection therewith, I have now the honor to inclose copies of the protocol of the 29th ultimo, between Admiral Polo and myself, and of the agreement of the 8th of December, and to request that the steps necessary to carry out the same may be taken by the Department of Justice.

I have, &c.,

HAMILTON FISH.

No. 8.

Mr. Williams to Mr. Fish.

DEPARTMENT OF JUSTICE,
Washington, December 23, 1873. (Received Dec. 27.)

SIR: I have the honor to acknowledge the receipt of your letter of the 22d instant, relative to carrying out the agreement of the United States with Spain respecting proceedings against the Virginius, and inclosing copies of the protocol* of the 29th ultimo, between the Spanish minister and yourself, and of the agreement* of the 8th instant.

In reply, I have to inform you that I have transmitted said papers, with a copy of your letter, to the United States attorney at New York, with instructions to have all the necessary papers prepared to libel the Virginius, upon her arrival there, for violation of the laws of the United States, and to take such action, touching the persons connected with the enterprise, as may seem proper.

Very respectfully,

GEO. H. WILLIAMS.

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* For inclosures, see Nos. 1 and 2.

No. 9.

Mr. Fish to Mr. Robeson.

DEPARTMENT OF STATE,
Washington, December 17, 1873.

SIR: Referring to the protocol signed on the 29th day of November, and to the agreement signed on the 8th day of December instant, between the Spanish minister and myself, of which copies were furnished to you with my letter of 8th instant, I have the honor to call your attention to the provision in those two papers relative to a salute to the flag of the United States, to be made by Spain, in the harbor of Santiago de Cuba, on the 25th day of December instant, and to the agreement in the protocol that if, "before that date, Spain should prove to the satisfaction of the Government of the United States that the Virginius was not entitled to carry the flag of the United States, and was carrying it at the time of her capture without right and improperly, the salute will be spontaneously dispensed with, as in such case not being necessarily requirable."

The Spanish minister, in behalf of his government, has submitted certain documents, including depositions taken before a United States commissioner, in the presence of the attorney of the United States for the southern district of New York, by whom the parties making the depositions were cross-examined.

These documents and depositions, together with copies of the register, and other papers of the Virginius, were, by direction of the President, submitted to the Attorney-General, requesting his opinion upon the force of the evidence, whether it does substantiate to the reasonable satisfaction of this Government that the Virginius was not entitled to carry the flag of the United States, and was carrying it, at the time of her capture, without right and improperly.

The Attorney-General holds, upon the evidence presented, that the register of the Virginius was a fraud upon the navigation laws of the United States, and is of the opinion that she had no right to carry the flag of the United States, and he "decides that the Virginius, at the time of her capture, was without right, and improperly, carrying the American flag."

By direction of the President, I have the honor to inclose herewith a copy of this opinion and decision of the Attorney-General.

The President directs me further to say that the conditions having thus been reached, on which, according to the protocol of the 29th of November last, the salute to the flag of the United States is to be spontaneously dispensed with, he desires that you will give the necessary orders and instruct the proper officers to notify the authorities of Santiago de Cuba of that fact, in time to carry out the intent and spirit of the agreement between the two governments.

I have the honor to be, sir, your obedient servant,

HAMILTON FISH.

[For inclosure see 4.]

No. 10.

Rear-Admiral Scott to Captain Whiting.

UNITED STATES FLAG-SHIP WORCESTER,
Key West, December 14, 1873.

SIR: In accordance with the Navy Department's instructions, copies of which are herewith inclosed for your guidance, you will proceed with the United States steamship Despatch to Bahia Honda, Cuba, on the night of the 14th instant, and there receive the steamer "Virginius," as directed.

You will take from the Pawnee a crew for the Virginius, and on receiving her place Lieut. A. Marix in command, and order him to take her to Tortugas, accompanying her with the Despatch, and giving such assistance as may be necessary.

On arriving at Tortugas you will place Lieutenant-Commander D. C. Woodrow, of the Ossipee, in command of the Virginius, and such other officers as you may deem necessary to take her to New York, using every exertion to put her in proper condition for the voyage. Direct the officer in command to proceed direct, and in no event to touch at any port on the way, unless compelled by extreme necessity. You are authorized to take from the Ossipee any articles of stores or provisions that you may deem necessary for the Virginius, and when she is ready for sea order Commander Walters, commanding the Ossipee, to convoy her to New York with all dispatch, and there report as directed by the Department's instructions.

The Department desires to be informed as soon as the Virginius is in our possession. You will, therefore, advise me of the fact as early as possible.

To your good judgment and energy are intrusted all details in carrying out promptly the Department's instructions.

Wishing you a pleasant trip,
Respectfully,

G. H. SCOTT,
Rear-Admiral, Commanding
United States Naval Force, North Atlantic Station.

Capt. W. D. WHITING, *U. S. N.*,
Commanding United States Flag-Ship Worcester,
and Chief of Staff, Key West.

No. 11.

Captain Whiting to Rear-Admiral Scott.

UNITED STATES STEAMER DESPATCH,
(AT SEA NEAR TORTUGAS, FLA.,)
December 17, 1873.

SIR: I take pleasure in informing you of my arrival at this anchorage, accompanied by the steamer Virginius, which I am now preparing for sea with all dispatch. Leaving Key West at 10 p. m. of the 14th instant, we arrived off the harbor of Bahia Honda, Cuba, at 1 p. m. of the 15th instant. No pilot appearing, the vessel was run in by Lieutenant-Commander Rodgers to a safe anchorage near the Virginius, lying off Fort

Difuntos, midway in the bay. Two miles further in, at the southern end of the bay, lay a Spanish gunboat, from which a boat put off and boarded the Virginius, till then without colors, and at — p. m. the United States ensign was hoisted at her peak. Shortly after Commander Cámara paid a visit of ceremony to this vessel, informing me that he had instructions to turn over to the accredited official of our Government the Virginius, then in his charge, asking me at what hour it would be convenient on the 16th to turn her over. Assured by me that a time most convenient to him would be agreeable to me, the hour of 9 a. m. was fixed, at which time, with the American flag flying at the flag-staff, Commander Manuel de la Cámara, of the Spanish navy, turned over the Virginius to the authorities of the United States, receiving my receipt for her.

I found her to have about fifty tons of soft coal on board, and immediately transferred the officers and crew brought over for her.

After examination of the engine and boilers, the fires were started. Provisions and the necessary stores were rapidly placed on board. At 1 p. m. both vessels hove up their anchors and started, but the Virginius was obliged to anchor again, before getting out of the harbor, on account of a derangement of her engines. Ascertaining that she could not be put in running order for several hours, she was taken in tow by this vessel, and at 3 p. m. left the bay of Bahia Honda.

I close this dispatch to send it by the Fortune; deeming it best, as we need no assistance, to communicate with you at once.

The Virginius has steam up now, and we will drop the tow.

I desire to state that, in carrying out my orders, I met with extreme courtesy from Commander Cámara, who tendered any assistance in his power.

Respectfully,

WM. D. WHITING,
Captain and Chief of Staff.

Rear-Admiral G. H. SCOTT,
Commanding North Atlantic Station.

No. 12.

Lieutenant-Commander Woodrow to Mr. Robeson.

UNITED STATES STEAMER OSSIPEE, (3d Rate,)
OFF THE BATTERY, NEW YORK,
December 30, 1873.

SIR: I have the honor to report that in obedience to an order from Admiral G. H. Scott, a copy of which is herewith inclosed, I took command of the steamer Virginius on the evening of December 17, off Dry Tortugas, relieving Lieutenant Marix.

Ensign George A. Calhoun and Second Assistant Engineer N. H. Lamden, together with three machinists, two boiler-makers, six seamen, E. F., six ordinary seamen, E. F., eight seamen, and fourteen landsmen composed her complement. Second Assistant Engineer Absolom Kirby and Midshipmen Underwood and Tyler subsequently joined the vessel.

I found her in a very filthy condition, with over twenty tons of ashes and dirt in her fire-rooms, and her crew exhausted by constant work since leaving Bahia Honda.

She was leaking under some cement in her fore-foot, and had water

in all her compartments. She had about seventy tons of bituminous coal on board, but no other stores. During the night I received stores from the Ossipee in the different departments, and a working-party of fifty men, who coaled ship from the schooner Mattie A. Hand.

Next morning, finding that the water had gained two feet in the fire-rooms, I stopped coaling and used all hands pumping and bailing out the ship. At 8 a. m. the water was up to the grate-bars, with four feet of water in forward compartment and two feet six inches in after one.

During the day I received assistance from the Ossipee in the way of working parties, to help clear ship of water, repack stuffing-boxes, and overhaul pipes and strainers about engines, and to repair the bunks in forecastle and cabins. Capt. William D. Whiting was on board during the day, and examined the leak in her forward compartment, with Chief Engineer King and myself.

This was the only leak of any consequence that we could find in the ship. At 4 p. m. the water was so much reduced that I was able to start fires in forward boiler, and at 8.15 p. m. in after boiler.

We were then riding by a hawser from the Ossipee, and as soon as steam was reported I backed the engines, and gained so much on the water with the main bilge pumps that Captain Whiting expressed himself as satisfied that the Virginius was in a fit condition to go north, and left the ship. Shortly after we went to sea in tow of the Ossipee. During that day, and as long as the sea was comparatively smooth, I kept the water down with the main engine pumps. As we proceeded north, and the sea became rougher, the rivets in one of her bow-plates became loose, as did also an old patch on the next plate abaft, and she leaked so badly that I had to plug up the limber-holes in her forward bulk-head to keep fire rooms clear.

During the forenoon of the 22d instant I threw overboard her port bower anchor and over twenty tons of old iron, wire rigging, &c., from her fore hold, and shifted the coal aft.

On the afternoon of the 23d instant I had from eight to ten feet of water in the forward compartment, and so much water in the fire-rooms as to endanger putting out the fires, and I signaled to Ossipee not to go further north, that there was a dock at Charleston.

She answered, "We are bound for Charleston," and changed her course to the southward. The increased speed enabled me to reduce the water in her fire-rooms, but I felt no confidence in being able to keep it in check, as the pumps were constantly breaking down and getting choked up, requiring sometimes an hour or more to repair them.

The pressure of water on the forward bulk-head was so great that it bulged out about six inches.

Besides this, my men were worn out, and had no place to sleep, as their bunks and bedding were drenched. The bows were working so much that the bunks in the forecastle came adrift from the ship's side.

At 3 a. m. 24th instant the crown-sheet of middle furnace after boiler gave out, and I had to haul fires from that boiler. Shortly after several blisters were reported in forward furnace, and at daylight I signaled condition of boilers and state of water to the Ossipee.

Chief Engineer King then came on board and examined the boilers, and when he returned to his ship we proceeded on up the coast, keeping in smoother water. That afternoon two furnaces in forward boiler gave out, although the steam-pressure was less than five pounds.

On Christmas morning the sea end wind increased and the Ossipee ran in under the lee of Cape Fear and anchored, and as the water commenced to gain in fire rooms I backed the Virginius's engines, but owing

to want of steam I could not turn the engines over fast enough to do much good, and the water gained slowly until 5 a. m. on the 26th instant, when the fires went out and the donkey-pump stopped. The hand-pump was broken and could not be repaired with any means at my command.

I signaled to the Ossipee to haul us up and take us off immediately, as the fore compartment was full of water up to a foot of the spar-deck. There were six feet of water in fore hold, and it had risen about six inches above the grate-bars in forward fire-room. The after compartment was dry, owing to the ship being so much down by the head.

When the Ossipee's boat came under my bows the sea was very rough, and it was blowing a gale of wind in squalls from the northward and eastward.

I succeeded with great difficulty in getting the men and officers transferred to the Ossipee, and deemed it inexpedient to attempt to save the bags and hammocks, on account of the great danger.

At 4.17 p. m., 26th instant, the Virginius sank in 8 fathoms water, her fore cross-trees above water. A pork-barrel buoys the end of her hawser and marks her position, in latitude 33° 44′ 10″ N., longitude 77° 59′ W., Smithville light bearing N. ¾ W., (p. c.,) and end of island N.N.E., (p. c.)

Inclosed herewith please find Second Assistant Engineer Kirby's report on the condition of boilers and engines. I also have the honor of forwarding the log of the steamer Virginius from December 16 to December 26, inclusive.

Very respectfully, your obedient servant,

DAVID C. WOODROW,
Lieutenant Commanding, U. S. N.

Hon. GEO. M. ROBESON,
Secretary of the Navy.

Respectfully forwarded.

JOHN WATTERS, *Commander.*

No. 13.

Mr. Robeson to Rear-Admiral Davis.

NAVY DEPARTMENT, *January 3, 1874.*

SIR: I transmit herewith a precept addressed to you, as president of a naval court of inquiry, ordered to convene at the Navy Department on the 7th instant, for the purpose of inquiring into the causes of the foundering of the steamship Virginius, recently delivered to the United States by order of the government of Spain.

Respectfully, &c.,

GEO. M. ROBESON,
Secretary of the Navy.

Rear-Admiral CHARLES H. DAVIS, U. S. N.,
Washington, D. C.

No. 14.

Mr. Robeson to Rear-Admiral Davis.

To Rear-Admiral CHARLES H. DAVIS, U. S. N.,
Washington, D. C.:

By virtue of the authority contained in the "act for the better government of the Navy of the United States," approved July 17, 1862, I hereby appoint Rear-Admiral Charles H. Davis president, Rear-Admiral John L. Worden and Commodore John C. Howell members, and Capt. Stephen B. Luce judge-advocate of a court of inquiry, which is ordered to convene at the Navy Department on Wednesday, the 7th day of January, A. D. 1874, for the purpose of inquiring into the causes and particulars of the foundering, on or about the 26th day of December, in the year 1873, off Cape Fear, of the steamship Virginius, recently delivered by the Spanish authorities at Bahia Honda, Cuba, into the possession of the United States.

The court will inquire—

1st. Into the exact condition of the Virginius in every department when she was delivered to the United States officers at Bahia Honda on the 16th December, 1873.

2d. As to what was necessary to be done to her to prepare her to go to the Tortugas.

3d. As to what actually was done to her before she left Bahia Honda.

4th. As to her condition during the passage to the Tortugas.

5th. As to her condition when she arrived at the Tortugas.

6th. As to the nature and extent of the examination that was made of her condition after her arrival at Tortugas.

7th. As to what was necessary to be done to her to prepare her to go to New York.

8th. As to what actually was done to her at the Tortugas to prepare her for her passage to New York.

9th. As to her condition when she left the Tortugas, and afterward, daily, during her passage toward New York, until she finally sunk.

10th. As to the immediate and remote causes of the sinking of the said vessel.

And, finally, they will report fully to the Navy Department upon all the above points, in order that all the facts in connection with the sinking of the Virginius may be clearly established, and they will also recommend any further proceedings which they may deem necessary in the case.

Given under my hand, at the Navy Department of the United States, this 3d day of January, in the year 1874.

GEO. M. ROBESON,
Secretary of the Navy.

No. 15.

Report of the naval court of inquiry.

NAVY DEPARTMENT,
Washington, D. C., January 16, 1874.

The court of inquiry ordered to convene at the Navy Department on Wednesday, the 7th day of January, A. D. 1874, for the purpose of in-

quiring into the causes and particulars of the foundering, on or about the 26th day of December, in the year 1873, off Cape Fear, of the steamship Virginius, recently delivered by the Spanish authorities at Bahia Honda, Cuba, into the possession of the United States, has the honor to submit the following report:

In order to conform to the injunctions and to follow the distinctions of the precept, this report is distributed under four heads, viz:

First. Replies to the separate inquiries contained in the precept, numbered from one to eight.

Second. The condition of the Virginius at the time of her leaving the Tortugas, and her daily condition subsequently up to the time of her sinking.

Third. The immediate and remote causes of the sinking of the Virginius.

Fourth. The final report upon the above points, and upon the question of further proceedings.

The burden of evidence goes to show that "the exact condition of the Virginius, in every department, when she was delivered to the United States officers at Bahia Honda, Cuba, on the 16th December, 1873," was as follows:

In the engineer's department the engines were in working order, but in indifferent condition. They needed cleaning, overhauling, repacking, &c. The auxiliary pump was out of order, and needed repairs. The furnaces were wooded and coaled, ready for firing, and the boilers were run up, preventing their thorough examination. Several tubes were plugged up in each tube-box; the boilers were ten years old, and bore the appearance of having been much neglected; the hand-pumps needed overhauling. In the hull a leak was discovered in the eyes of the ship, which had at one time been stopped by cement. This cement, by the working of the vessel, had become partially detached from the hull, and gave admission to a small stream of water. There was water in the after compartment, fire-room, bilges, and forward compartment—about 2½ feet in the latter; and in the fire-room the water was above the floor-plates. The Virginius had not been pumped out for the previous twenty-four hours. Some sixty tons of bituminous coal had been dumped into the hold, and there was also a quantity of old iron and wire rigging in the fore hold.

In the fire-room was a quantity of ashes, cinders, and *débris*, estimated at fifteen tons. The condition of the Virginius was filthy in the extreme. All the furniture, except a few chairs, had been removed; no stores save the coal referred to were on board. Of the two compasses, one was in fair condition; the chain steering-gear was old and worn, and the wheel needed repairs. There was one sail, a jib, on board.

Second. "As to what was necessary to be done to her to prepare her to go to the Tortugas."

It was necessary to provision her, make a few minor adjustments of the machinery, to fill the boilers, overhaul the steering-gear, repair the wheel, examine the compasses, bend the only sail on board, clear the fire-room of ashes, &c., pump the ship out, put in order the auxiliary and donkey pumps, and examine the vessel for leaks.

Third. "As to what actually was done to her before she left Bahia Honda."

All the above was actually done, except putting in order the pumps. The auxiliary pump was repaired during the passage to the Tortugas.

Fourth. "As to her condition during her passage to the Tortugas."

Her condition was fair. In attempting to steam out of the harbor,

the condenser became heated and the engines were stopped. The Despatch then took her in tow. (The Virginius got under way at 1.30 p. m., December 16, 1873.) The hand-pumps were kept constantly at work. At 1.30 a. m. of the 17th December the Virginius's engines were got into working-order and were started. At 7.45 the tow-lines from the Despatch parted, and the Virginius proceeded under steam, without being further towed, to the Tortugas. The engines worked well after they were started at 1.30 a. m., and the steam-pumps kept the leak under. The weather was fine, the sea smooth.

Pressure of steam carried, from twenty to twenty-two pounds.

At 1.50 p. m., December 17, the Virginius anchored at the Tortugas.

Fifth. "As to her condition when she arrived at the Tortugas."

She was in the same condition as when she left Bahia Honda, except that the auxiliary pump had been repaired, and that some minor repairs had been made to the engines on the passage.

Sixth. "As to the nature and extent of the examination that was made of her condition after her arrival at Tortugas."

On December 18, 1873, Capt. W. D. Whiting, Lieut. Commander D. C. Woodrow and Chief Engineer W. H. King made an examination of the hull and engines of the Virginius. A small leak was discovered in the bows, on the inside and near the stem, which appeared to have been at one time stopped by filling in with cement. At the time of the examination the cement was partially detached from the shell of the vessel and water was welling in over and under the cement.

In the forward compartment the hull was much rusted, the iron plates thin and covered with heavy rust scales; there was a plate in the port bow, about ten feet abaft the stem, which had a patch on it. There was no evidence of leak in the starboard bow. The engines were also examined and found to be in fair working condition. The donkey-pump was found much out of order, and the stuffing-boxes needed repacking.

The boilers were run up and could not be thoroughly examined. The passage from Bahia Honda had developed no leaks nor any especial weakness, as twenty-two pounds of steam had been carried.

So far as was practicable the whole vessel had been searched for leaks, but none, other than the one in the bow, had been discovered.

Seventh. "As to what was necessary to be done to her to prepare her to go to New York."

With the evidence of her successful passage from Bahia Honda to the Tortugas, and considering the apparent unimportance of the leak in the bow, which the steam-pumps had easily kept under, all that appeared necessary to be done to the Virginius was to prepare her for sea by packing stuffing-boxes, reeving new wheel-chains, furnishing her with the necessary stores and provisions, repairing and fitting her boats, and repairing the donkey-engine. This statement is based upon the evidence before the court.

Eighth. "As to what actually was done to her at the Tortugas to prepare her for her passage to New York."

Everything noted in the answer to the seventh interrogatory, with the exception of repairing the donkey-pump.

Ninth. "As to her condition when she left the Tortugas, and afterward, daily, during her passage toward New York, until she finally sank."

In the opinions of the officers who have appeared before the court, as expressed in their evidence, the Virginius, when she left the Tortugas, was in a sufficiently seaworthy condition to make the passage to New York, provided no very bad weather supervened. The daily condition of the Virginius, as shown by the evidence, was as follows:

The Virginius steamed from the Tortugas in tow of the Ossipee on the 19th day of December, 1873; the weather was fine, and the engines turned over slowly, to avoid running up on the Ossipee. The steam-pumps kept the leak under. The leak in the bow did not apparently increase, although it was observed that the vessel worked forward.

December 20, 1873.—Weather fine; sea smooth; wind from the northward; the leak was kept under by the steam-pumps; Virginius stopped twice to repair eccentrics; average pressure of steam, eight pounds.

December 21, 1873.—Weather fine; wind from north and east, and wind and sea moderate; Virginius leaking forward more than at any previous time; water gained in forward compartment; the holes in water-tight bulk-head of forward compartment were plugged up; strainers on bilge-pumps became choked; water gained in fire-room; got the donkey-pump in working-order, and the water was cleared from the fire-room; the plugs were removed from the forward bulk-head to allow the water to run aft to the pumps; during the night the wind and sea increased.

December 22, 1873.—Weather cold and rainy; wind fresh from north and east; sea rough; ship rolled and pitched moderately. The working of the ship's bows was quite apparent; the engines were turned over slowly, to avoid fouling the Ossipee.

The Virginius leaked freely, and the forward compartment gradually filling. The steam and hand-pumps were worked constantly. During the night it blew heavily, in squalls. Water in forward compartment, 4½ feet. Average steam-pressure, 14 pounds.

December 23, 1873.—Weather cloudy and rainy; a moderate gale from the north and east was blowing; the sea was rough. During the morning the water gained fast; six feet in the forward compartment, and nearly up to grate-bars in the fire-room. Steam and hand pumps were constantly worked. At 8 a. m. signal was made to the Ossipee, "Making water badly; go ahead faster, so that we can work our pumps," (move quickly.) Shortly after, Ossipee was signaled, "Stand in toward land." At 9.30 a. m. Ossipee changed course to northwest by west and made sail. The port-anchor, wire rigging, and old iron in the fore hold were thrown overboard to lighten the vessel forward; coal was shifted from fore to aft hold; a sea-anchor was rigged, under the lee of which the boats might ride in case of necessity; the boats were also provisioned and watered. At 5.30 p. m. one fire, under forward boiler, was extinguished by water; Ossipee was signaled, "Will waive red lantern tonight, in case we need assistance;" also, "Water rising in fore hold; can go no farther north. Dock in Charleston." Ossipee replied: "Is water rising in fire-room?" Was answered: "Yes, six inches." Ossipee signaled: "Can you hold on until daylight?" Was answered: "Yes, if forward bulk-head holds out." Ossipee signaled: "We are bound for Charleston." During the night the wind moderated, and the pumps gained on the leak, in consequence of the increased speed of the engines and the quicker working of the pumps, the Ossipee being under steam and sail standing toward the land, and going faster than she had previously been going. During the night 8 feet of water in forward compartment; Virginius pitched heavily and steered badly.

December 24, 1873.—Weather cold and thick; wind from north and east, moderate, with moderate sea. At 3 a. m. crown-sheet of after boiler gave way, and fire was hauled from under the boiler; the fact was signaled to the Ossipee. At 7.20 Chief-Engineer King, of the Ossipee, went on board the Virginius to inspect the boilers; he left at 8.20, and 8.25 the Ossipee signaled: "We will continue up the coast." At this

time the Virginius was about forty-three miles from Charleston. The steam and hand pumps were constantly worked; officers and men were nearly exhausted. During the afternoon blisters were discovered on the forward boiler; hauled fires in one furnace, and reduced steam to 2½ pounds. During the night the wind and sea increased, and the leak gained.

December 25, 1873.—Weather cold and rainy; wind from north and east, blowing a moderate gale; sea rough. At 6.15 a. m. the towing-hawser parted, and the Virginius steamed toward the land, the Ossipee leading. At 8 a. m. a cast of the lead was got in eight fathoms; land was sighted, bearing north by east; distant about fifteen miles. At 8.30 the Ossipee anchored, and sent end of hawser to the Virginius. The Virginius commenced to back her engines, in order to work the steam-pumps. The leak gained fast during the day. The water was 9 feet in the forward compartment, 2 feet in the fore hold, and 8 inches in forward fire-room. Signal was made to Ossipee: "Haul us up and take us off; can do nothing more." At 5 p. m. the crew of the Virginius went aft, and asked that the ship might be abandoned, as they were entirely exhausted, having been wet through for several days, and having had no place to sleep in.

During the afternoon the donkey-pump gave out. At 6 p. m. it was repaired and working, but very indifferently. Stopped backing the engines, as, from the low pressure of steam and the increase in the leak, they were of little or no service; they could not be backed rapidly enough.

At 7 p. m. Virginius signaled, "Can hold out until morning." During the night the wind and sea increased, and the water gained steadily; 5 feet in fore hold and nearly up to the grate-bars in forward fire-room. The Virginius was slowly sinking by the head.

December 26, 1873.—Weather cloudy, with rain. A gale was blowing and heavy sea running. At 3 a. m. signal was made to Ossipee, "Water gaining fast; fires nearly out; haul us up." The bows of the Virginius worked so badly that the bunks in the top-gallant forecastle fell down. At 5 a. m. the water rose above the grate-bars and fires were extinguished. Signal was made to the Ossipee, "Haul us up and take us off." At 6 a. m. the wind moderated; the crew had been employed bailing with buckets, but at this time ceased, as further efforts were useless.

The Ossipee hauled the Virginius to within fifty fathoms, and dropped a cutter down to her to receive her crew. By — a. m. the Virginius was abandoned, the officers and crew losing nearly all their personal effects, but saving the chronometer and nautical instruments.

At the time of abandoning the Virginius the forward compartment contained 10 feet of water, the fore hold 5 feet, and the water was five inches above the grate-bars in the fire-room.

At 4.17 p. m. the Virginius sank, bows first, in eight fathoms of water.

Tenth. "As to the immediate and remote causes of the sinking of the said vessel."

The immediate causes of the sinking of the Virginius were stress of weather, the increased leaks caused thereby, the giving out of the boilers, and the inability to work the pumps effectively, in consequence of the failure of the steam-power.

The remote causes were the weakness of the hull, resulting from age and neglect, and the deterioration of the boilers from the same causes, which deterioration was not fully appreciable when the examination was made of them at the Tortugas.

No. 16.

Final report of the naval court of inquiry.

FINAL REPORT.

Finally, the court has the honor to report that the preceding statements comprise all the circumstances and points enumerated in the precept in a manner so full, plain, and comprehensive that all the material facts connected with the sinking of the Virginius are thereby clearly established.

Beyond these material facts it is made apparent by the testimony of the superior officers, including the chief engineer, that zeal in the performance of duty led them to rely too confidently upon the permanence of the existing condition of the hull and the actual working of the machinery exhibited in the passage from Bahia Honda to the Tortugas, and during the first three days out from that port.

The court, however, satisfied that their conduct was becoming and praiseworthy throughout, does not deem any further proceedings in the case necessary.

C. H. DAVIS,
Rear-Admiral and President of the Court.
S. B. LUCE,
Captain United States Navy, Judge-Advocate.

No. 17.

Mr. Fish to Admiral Polo de Bernabé.

DEPARTMENT OF STATE,
Washington, March 28, 1874.

SIR: I have the honor to transmit herewith for your consideration a copy of the report* of a naval court of inquiry convened under the direction of the President, by an order of the Secretary of the Navy, promulgated on the 3d of January last, to inquire into the causes of the foundering of the steamer Virginius, then recently delivered to the United States by order of the government of Spain.

The report contains all the evidence, documentary and oral, submitted to the court of inquiry in relation to the subject of the inquiry on that occasion.

Accept, sir, &c.,

HAMILTON FISH.

No. 18.

Admiral Polo de Bernabé to Mr. Fish.

[Translation.]

LEGATION OF SPAIN AT WASHINGTON,
December 30, 1873. (Received December 30.)

In obedience to instructions received from his government, the undersigned, envoy extraordinary and minister plenipotentiary of Spain, has

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*For inclosures, see Nos. 13 and 14.

the honor to ask the attention of the honorable Secretary of State of the United States to the matter of entering upon the consideration of the damages and injuries caused to Spain by the acts of the Virginius, which vessel was fitted out in the port of New York, in the year 1870, for the purpose of forming part of an expedition organized in the United States against the Spanish government and its subjects in the island of Cuba. It could not have been otherwise than granted, in the opinion of the undersigned, that the expedition or voyage undertaken by this vessel, in October of that year, was not of a purely commercial nature, as this is understood in international jurisprudence, and by the municipal laws of the United States, but that in view of the articles which she carried, her character was an essentially military one.

If credit is to be given to the testimony of her captain, Shepperd, and to the chief of staff, Varona, who was on board, with the so-called General Quesada, as, in view of its importance, must be done until it shall have been refuted or destroyed, the Virginius left the jurisdiction of the United States for the purpose of engaging in piratical acts, which purpose it soon undertook to carry out on the high seas.

From the sworn statement of Shepperd, which was transmitted to the Department of State with a note from this legation, bearing date of the 10th instant, it appears that proposals of a piratical character were made to him in New York at the house of one José Maria Mora, and both Shepperd and Varona testify that the attempt was made to act on the high seas in accordance with said proposals, and that this attempt was only given up when it was discovered that the vessel which they were about to capture carried the English instead of the Spanish flag.

It is hereby clearly shown that there was a purpose, *to which a beginning of execution was given*, to commit depredations on the high seas upon Spanish property with a vessel which did not legally carry the flag of any nation, which, according to the laws of nations, constitutes the *crime of piracy*.

It is known, moreover, that those who fit out illicit expeditions like that of the Virginius seek to invest them with the character of legitimate commercial transactions, in order thus to conceal the criminality of their designs. This occurred in the case of the Virginius; only in this instance the deception has become patent.

From the first moment everything connected with the said vessel was a pure fraud. The purchase was made of the Government of the United States with a criminal intent. The money which was paid for it was acquired in the *United States* by the enemies of Spain in contravention of the laws of what would be required by the friendly relations existing between the two nations. The certificate of her registry was obtained at the New York custom-house through perjury on the one hand and an abuse of confidence on the other from the customs officials.

Her papers and crew-list were false, inasmuch as they concealed the real destination of the vessel, giving a false one in its place. Her clearance was not valid for many reasons, among others because her manifest did not contain a true statement of the whole cargo placed on board by Quesada. The voyage on which she sailed at the time referred to was conceived and executed in all its details by fraudulent designs and practices.

It is not under such circumstances that the operations of legitimate commerce are undertaken and carried out, nor is it possible to allow the transportation of munitions of war to open ports, under cover of such a disguise, in the possible interest of an insurrection existing in any section of the country to which such ports belong. This is a practice

which, in the light of certain doctrines, whose inconsistencies are, perhaps, not observed, the most that they do is to grant it a negative tolerance, but they by no means encourage it.

It is true that the Virginius did not carry a large cargo of arms when she left New York, but she sailed with the intention of receiving on the high seas, near Curaçoa, according to agreement, a considerable cargo of munitions of war, which was conveyed to her by the schooner Billy Butts, which likewise left the port of New York for the purpose mentioned. If it was thought that this operation was one of legitimate commerce, why was not this cargo taken in in the port of New York?

When the Virginius left the port of New York it is possible that she had not, at that moment, a sufficient number of recruits on board in order to constitute her a war transport, but she carried the superior officers, the principal persons who, both in the United States and in Cuba, busy themselves in promoting the insurrection.

Of much more importance were those persons, in view of the aid that they were able to lend to the insurrection and to its acts against the legitimate government of Cuba, than were Messrs. Mason and Slidell in reference to the United States and the Confederate States when they were taken by an American cruiser from on board the Trent.

The first expedition of the Virginius, in conjunction with the Billy Butts, under command of the so-called General Quesada, was of a military character, as is shown by the testimony which the undersigned has already had occasion to send to the honorable Secretary of State, to say nothing of other circumstances which likewise prove it, and it is undeniable that it had its commencement and origin in the United States.

Of the same nature was the last attempt, in which the said vessel was taken by the Tornado, inasmuch as her principal officers, such as Ryan, del Sol, and others, were in the pay and employ of the Cuban insurrection, and they, in their turn, paid and employed other persons within the jurisdiction of the United States to take part in a military expedition which was to sail from New York and other points of the United States, they going on board of the Virginius by the steamer Atlas, and by other means, in order finally to go to Cuba.

The circumstance that since October, 1870, the Virginius has touched at foreign ports, without having returned to any port of the United States, cannot, if this is so, exonerate the vessel from her criminality nor the United States from the responsibility which they have incurred by reason of the protection so effectually given by their consuls and vessels of war.

Thanks to this protection, there was formed outside of the material territory of the United States, but within their legal jurisdiction, a kind of base whence the Virginius has been able to carry on hostile operations against Spain, and to land expeditions of considerable magnitude in the island of Cuba.

With respect to all these matters, the undersigned cannot but confidently expect the admission on the part of the Secretary of State that the obligations of one power toward another friendly power, in whose territory there exists an insurrection to which neither party has granted belligerent rights in an international sense, are not less than those of a neutral during a regular state of war between two other countries with which the neutral is on terms of peace and friendship. The duty of efficaciously arresting beginnings, as well as of preventing military expeditions from being conveyed from one country to another, in which, unfortunately, an insurrection exists, is equally obligatory in both cases, and in order to fix the measure of the efficiency referred to, the under-

signed is willing, in the case of the Virginius, to abide by the proofs furnished and the stand taken at Geneva, in the name of the United States, whereby was shown the responsibility incurred by Great Britain toward the United States.

Finally, in view of the considerations which have been only generally set forth, the undersigned feels confident that the Government of the United States, acting in obedience to the sentiments of justice and equity which it so ably invoked in its own case, will not hesitate to signify to Spain its willingness to attend to such reclamations as she may have to present for injuries done, with proof that such injuries have been done by the acts of the Virginius.

The undersigned avails himself of this occasion to reiterate to the honorable Secretary of State the assurances of his most distinguished consideration.

JOSÉ POLO DE BERNABÉ.

The Hon. SECRETARY OF STATE
of the United States.

No. 19.

Mr. Fish to Admiral Polo de Bernabé.

DEPARTMENT OF STATE,
Washington, January 9, 1874.

The undersigned, Secretary of State, has the honor to acknowledge the reception of the note of his excellency the envoy extraordinary and minister plenipotentiary of Spain of the 30th ultimo, asking consideration of alleged damages and injuries to Spain caused by the acts of the steamer Virginius.

On careful perusal of this note the undersigned perceives that the reclamation presented in behalf of Spain is founded on two distinct grounds: first, the assumption that the Virginius, at the time of her departure from New York, sailed with false papers, including registry, crew-list, and manifest; secondly, the assumption that, in other respects, the expedition was unlawful by reason of the imputed piratical character or purposes of the voyage.

As to the first ground of reclamation, it might be sufficient to say that at the time of the departure of the Virginius from New York no objection to the validity of her papers was made from any quarter either to the Government here or to the officers of the customs in New York; nor had anything taken place to awaken suspicion in that respect. All the evidence on that subject referred to by his excellency the envoy of Spain is of recent date, and the facts have come to light only in consequence of the capture of the Virginius by the Tornado, and of subsequent incidents occurring at Santiago de Cuba.

But if it had been otherwise, the falsification of the papers of the Virginius would have been a mere municipal offense on the part of the persons implicated, subject as such to punishment by the local law of the United States, and, whether so punished or not, involving no possible question or matter of controversy with any foreign government. And, therefore, if, as his excellency the Spanish minister insists, the falsification of the register of the Virginius were one of the incidents of an intended voyage illegal in other respects, yet this particular fact could not be entitled to any consideration in an international point of view; nor could it constitute reason of complaint on the part of any foreign government.

Finally, as relates to this cause of reclamation, if, which cannot be admitted, it were possessed of any force in other relations, still it would be an all-sufficient answer to say that such an act of mere municipal fraud as the falsification of the ship's register, even although a Spanish subject should have been one of the parties to the fraud, cannot involve responsibility on the part of the United States toward Spain as for want of diligence or good faith, seeing that the imputed frauds were not brought to the notice of the United States by Spain, and were otherwise unknown and unsuspected by the Government.

As to the second ground of reclamation, that is, the imputed illegal intentions or objects of the voyage of the Virginius, the undersigned does not discover in this any just cause of responsibility of the United States to Spain, whether the question be considered in the light of the municipal law or that of the law of nations.

It is not pretended that the Virginius was armed, equipped, or manned for war in any port of the United States; that she bore at the time, or subsequently received, any armament as a ship of war; that her build or equipment had any special military character; or, indeed, that she was intended to, or ever did, in fact, act as a cruiser, piratical or other, against Spain, or the subjects of Spain.

All which is alleged in this respect seems to be that she had on board some inconsiderable invoice of arms or munitions of war, and, it may be, some few persons as passengers, subjects of Spain, and implicated in the existing insurrection of Cuba, but not in sufficient number, as his excellency the minister of Spain admits, to impress upon her the character of a military-transport ship. But the destination of the ship was the neutral port of Curaçoa; the voyage was, on its face, a perfectly lawful one; and the ship seems to have pursued her clearance, and, as it is understood, to have proceeded according to her destination, without touching or attempting to touch on the island of Cuba.

There was no allegation or charge of any improper intent or purpose in the voyage on which she was about to sail, and there was nothing in the build, equipment, cargo, or destination of the vessel to excite suspicion or to authorize proceedings against her at law, or detention by the President. There is no doctrine in the law of nations more universally admitted than that a neutral or friendly government cannot be rendered responsible for shipments of arms, munitions, or material of war made by private individuals at their own risk and peril, and as a private speculation.

If a state of war exists, the parties concerned are unquestionably exposed to the confiscation of their goods as contraband of war, but in that case their act affords no ground of reclamation against their government. Such, as the undersigned undoubtingly assumes, is the received law of nations, not only in the United States, but among all the maritime states of Europe, including Spain herself. It avails nothing to suggest that, as a question of abstract or speculative right, this doctrine of the law of nations involves "inconsequences;" suffice it that such is the doctrine, as universally admitted both in Europe and America.

Hence the undersigned is constrained to deny that there is anything in these particular facts, as represented by the Spanish minister, appertaining to the cargo and voyage of the Virginius, to imply responsibility on the part of the United States.

These observations apply with equal or more force to the voyage of the schooner Billy Butts, as, indeed, is impliedly conceded by the omission to base any special claim on the voyage of that vessel.

The undersigned is unable to discern any relation between the present question and that of the Trent, it never having been pretended by the United States that the Trent was a case of unlawful equipment in a neutral port, or that her character or her voyage imparted to the United States any cause of reclamation for damages as against Great Britain, and it being admitted by Great Britain that a state of war existed when the act complained of was done.

In conclusion, the undersigned cannot concur with his excellency the envoy from Spain in perceiving any analogy whatever between the case of the Virginius and that of the Alabama, or other vessels, fitted out in the ports of Great Britain during the late civil war in the United States, and which became the subject of arbitral adjudication at Geneva under the treaty of Washington. If there had been a state of war and the Virginius had been armed, equipped, and manned in the port of New York as a regular ship-of-war; if she had then cruised as such on the high seas and had captured and destroyed Spanish merchantmen; then, but not otherwise, Spain might have appealed to the proceedings before the tribunal of arbitration at Geneva as an argument against the United States on the present occasion, exhibiting the question, in behalf of individual Spanish subjects, of redress for injuries suffered by them in consequence of supposed want of due diligence on the part of this Government in not preventing the departure of such ship of war from the ports of the United States. But there is no pretension that such is the present case. Spain, in advancing the present reclamation, does not admit that there is a state of war, and does not pretend to represent injuries of subjects of hers, preyed upon by the Virginius as a cruiser, but damages and injuries of Spain as a nation or government, by reason of the assumed relation of the acts of the Virginius to the existing insurrection in Cuba. And it is that very class of claims which, presented by the United States against Great Britain mainly in the purpose of obtaining a determination of the question, was disposed of by the arbitrators in their unanimous formal declaration that claims of this nature "do not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations." In appealing to the acts of that tribunal as authority Spain must be considered as accepting such authority, which is conclusive as argument in opposition to the present reclamation on the part of Spain.

With these observations the undersigned has the honor to renew to his excellency the envoy extraordinary and minister plenipotentiary of Spain the assurance of his high consideration.

HAMILTON FISH.

His Excellency Señor DON JOSÉ POLO DE BERNABÉ,
&c., &c., &c.

No. 20.

Admiral Polo de Bernabé to Mr. Fish.

[Translation.]

LEGATION OF SPAIN,
Washington, February 2, 1874. (Received February 2.)

The undersigned, envoy extraordinary and minister plenipotentiary of Spain, has had *the honor to receive the note* which the honorable

Secretary of State was pleased to address to him under date the 9th ultimo, in reply to that of this legation of the 30th of December, 1873, relative to the damages and losses occasioned to Spain by the acts of the steamer Virginius, with reference to which the undersigned regards it as his duty again to call the attention of the Secretary of State to the text of his communication of the 30th of December, 1873, referred to with a view to observe that the claim which is therein made is based upon the following consideration, namely: That the Virginius was fitted out at the port of New York during the year 1870 to form part of a military expedition organized in the United States against the Spanish government and its subjects in the island of Cuba, from which time she was efficaciously protected by the consuls and men-of-war of the United States; thanks to which protection she succeeded in forming for herself outside of the material territory of the United States, but within their legal jurisdiction, a sort of base, whence the Virginius was enabled to commit hostilities against Spain and land important expeditions in the island of Cuba. The falsity of the register of the ship's roll, of the list of passengers, of the manifest, and of the clearance, were insisted upon as showing that the expedition was of a military and not of a commercial character; and, therefore, that every reasonable pretext of a legal enterprise vanished in advance, or that the taking on of arms, munitions, and other war-material is, so far as it was done, on the account and at the risk of individuals, might be looked at in the same light.

Operations of this sort are scarcely tolerated by international law, and the eminent defender of the interests of the United States at Geneva established in respect to them that, pursuant to modern opinion on similar subjects, acts such as those just set forth are contrary to wise principles of neutrality.

A breach of international law to the injury of Spain and her subjects being thus alleged and proved, the former has a just cause for complaint against and reparation from the United States, unless the latter can exonerate themselves from all responsibility by showing that they were in no way at fault in the matter.

The considerations set forth by the honorable Secretary of State for the exemption of the United States seem to the undersigned to be insufficient, if either the facts or the precepts of law be regarded. The undersigned does not acknowledge that at the time when the Virginius started from New York nothing had happened which could give occasion for suspicions in regard to the validity of her papers. Certainly the circumstance that, before the issuing of the register, the omission to give the security usual in such a case for a document which for so many months served as a protection to the Virginius against the Spanish cruisers, must have been an occasion for the collector of customs at New York, and all his subordinates whose obligation it was to prevent the departure of vessels which had no regular clearance, to entertain at least suspicions that the voyage on which she was about to proceed was illicit, even if it should be denied, apparently with reason, that any of those functionaries knowingly lent themselves to such an irregular clearance.

Nor can the assertion be allowed to pass that all the testimony relative to the falsity of the documents adverted to is of recent origin and was only brought to light in consequence of the capture of the Virginius by the Tornado, and of the subsequent incidents at Santiago de Cuba.

More than eight months ago this legation invited the attention of the

Department of State to the deposition of Captain Shepperd, taken at New York, on the 2d of May, 1872, before a judicial agent of this Government. To this deposition the Department of State replied by transmitting a copy of an opinion of Attorney-General Bristow, in which that high functionary stated that he had examined Shepperd's testimony, and had found therein cause to suspect that the register of the steamer was false and in violation of the navigation laws; (that the papers submitted furnish information which may give rise to a suspicion that the registry of the steamer was fraudulent and in violation of the navigation laws.)

Can it, then, be doubted that if the said Attorney-General had taken steps for an examination of the registration document, for which purpose the Department of Justice had greater facilities than this legation, that he would have reached the same conviction as that recently set forth by his present successor?

Besides these circumstances is the one that, many months before the capture by the Tornado took place, an officer of the Spanish navy, who commanded the war-steamer Bazan, then at the port of Colon, (Aspinwall,) animated by sentiments of deference toward a nation with which he knew that his own government had strong relations of friendship, addressed a communication, under date the 27th of July, 1873, to Commander Reed, of the United States war-steamer Kansas, in which he said to him: "I denounce the steamer Virginius in the name of the Spanish government as a pirate, and request you that, in consideration of the good relations existing between the two countries, you may arrange for sending that vessel to the United States for trial before the courts of her own country, when Spain will adduce the proof in her possession, with the understanding that if this proof should not be found sufficient for the condemnation of the Virginius, as a representative of the Spanish government I assume, on behalf of Spain, the obligation to pay all damages and expenses which may be occasioned by the detention of the vessel."

It may be presumed that this communication was transmitted without delay by Commander Reed to the Secretary of the Navy at Washington, and in view of this, and also of the previous communication of the undersigned on the same subject, it is difficult to comprehend how Spain could have done more, compatibly with her dignity, to incite the United States to expose the piratical character of the vessel referred to, and to set on foot a serious investigation in regard to the beginning and course of her career.

The undersigned duly appreciates the responsibility which, pursuant to municipal law, is incurred by the forging of solemn documents which attest the nationality of a merchant-vessel on the high seas, and secures immunity for the flag which is rightfully displayed. The duties of the profession to which he has devoted himself have heretofore required from him a deliberate study of maritime jurisprudence, and he can do no less than protest against the doctrine that such a forgery in no way involves a possible question upon the subject for controversy with a foreign government, and that it cannot become a subject for consideration in view of international obligations, and does not constitute a subject for complaint on the part of any foreign government.

Spain complains that the United States have not prevented the organization, the departure, and the active prosecution of the different hostile enterprises against Cuba in which the Virginius was an agent. The United States answer that they took efficacious measures toward preventing her departure from New York, and to this Spain replies by

pointing to the fraudulent documents issued by the collector of customs at that port, and insists that those show the very reverse of having taken efficacious measures of prevention, and the undersigned is not aware of any principle of international law which should prevent Spain from referring to those spurious documents.

It may also be said that the offense of those in this country who promoted the expedition adverted to was an offense against the United States, inasmuch as their schemes were directed against Spain, and that municipal laws were violated in the act of infringing the precepts of a good international understanding; and that unless this Government can show that it made use of due efficiency for preventing the departure and prosecution of the expedition, this offense becomes one of the United States themselves, whereby, pursuant to international law, it behooves them to make ample reparation to Spain.

How can it be pretended that Spain is incapacitated from proving an act which demonstrates the absence, as has been said, of proper preventive measures?

This is another phase of the question: the Tornado took on the high seas a vessel, on board of which there was a military force for the invasion of the island of Cuba, thereby carrying death and destruction to the loyal subjects of Spain and their property.

The United States interpose and deny the legality of the capture as alleged by the President of the United States in his annual message to Congress, because the captured vessel was duly registered at the port of New York and formed a part of the mercantile marine of the United States, and, having the certificate of registry in the usual legal form, her capture took place in derogation of the sovereignty of the United States. If, then, the two governments, actuated by desires for peace and friendship, had not succeeded in agreeing upon the bases of the arrangement contained in the protocol of the 29th of November, 1873, is it believed that Spain would not have been able to justify the capture before the great powers of the earth, by showing that long before the capture took place she had called the attention of the Government of the United States to the circumstance that the Virginius was not a vessel of those States, and that all the representations in regard to her being true which were made at the time referred to, pursuant to them it had been determined that the cruiser which made the capture should operate?

The undersigned can do no less than maintain that the granting of a false register and a false certificate of register to the Virginius show that this Government did not attend with due efficacy to preventing the departure of the expedition, which constituted a hostile act against the sovereignty of a country with which the United States were at peace.

To investigate and determine the measure of the efforts which ought to have been made towards preventing the said piratical expeditions, Spain accepts the criterion followed by the United States at Geneva, where, moved by zeal for their own interest, they declared such a measure of efficacy to comprehend a co-operating zeal, continuous application, "uninterrupted endeavors, the employment of all the faculties adequate for the purpose and the unwearied and undelayed granting of attention, activity, and assiduity, (enlisted zeal, steady application, constant effort, exertion of all the appropriate faculties, and, without weariness or delay, attention, industry, and assiduity.")

The second part of the answer of the Secretary of State, so far as it represents the impossibility of finding in the note which the undersigned had the honor to address to him, any just ground on which the respon-

the opinion of the undersigned, *guilty of unfaithfulness to his official duty* when he granted a clearance to the Virginius.

To this end, and with reference to the requirements of the active and efficient repression of criminal acts, which is the obligation of every country, both in respect to its interest as well as that which it does in respect to the interests of other countries with which it may be in relations of peace and friendship, the government of Spain considers that it has ground for asking reparation from the United States, and this not so much only on account of the first voyage of the Virginius, but pursuant, as the undersigned took care to state in his note, on account of all the subsequent acts of the said steamer, in which she received aid and protection from the consular and naval authorities of this country.

With reference to those acts which constitute an infraction of the local laws, and which, from the moment they were directed against Spain, constitute an offense in which the United States were participators unless they can exonerate themselves from such a participation, the undersigned calls the attention of the honorable Secretary of State to the following doctrine laid down by a judge of the Supreme Court of the United States, which, as a material for a text and for greater precision, is copied as follows, in English:

When a person forms the *guilty* intention of carrying on a military expedition or enterprise from the United States against the territory or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, and shall provide or prepare the means to do so, *his crime is complete.* The expedition or enterprise which the party must contemplate involves a collection or combination of men who are to become members of the expedition. The subscription of money or munitions of war merely does not violate the language of the act of Congress under consideration if no military expedition from the United States be set on foot or contemplated, and for this reason the subscriptions to the cause of Greece, Hungary, or Italy were not the subject of judicial cognizance. But the subscriptions of money, provisions, munitions of war, or the means of transportation, the purchase of bonds issued by a revolutionary government, junta, or military chief, having for their object to afford money, provide men in the United States who shall carry on hostilities against a friendly state or person, is a violation of the act of Congress, and all the persons who participate, in that form, with the contemplated enterprise, are guilty as principals, and are involved in the same penal consequences. The misdemeanors all accessories share as principals, and the accessory is he who by hire, commerce, counsel, or conspiracy, and he who by showing an express liking, approbation, or assent to an illegal enterprise, does aid and abet a party to commit it. We quote the language of the act of 1818, to exhibit its broad and comprehensive import and the sternness of its rebuke to all the transactions we have alluded to:

"If any person shall, within the territory or jurisdiction of the United States, *begin or set on foot* or provide or prepare the means for any military expedition or enterprise to be carried on thence against the territory or dominions of any state, colony, district, or people with whom the United States are at peace, every person so offending shall be deemed guilty of a high misdemeanor."

The terms of this act do not require that the expedition or enterprise shall be completed, or that it should even leave the United States. The language is, if any person shall *begin* or "set on foot." It does not require that all its arrangements shall be perfect, and that it shall be in a condition to leave the United States. The act stigmatizes as unlawful the preparation or provision of the means to carry on the expedition or enterprise. Thus, whether the execution of the enterprise or the organization of the expedition is "begun" or "set on foot" by the enlistment of recruits or the collection of arms and other munitions of war or transports, the result is the same. If the object of such preparations is to equip or to fit out an expedition from the United States to carry on hostilities against a friendly state, the acts done in furtherance of that object are illegal and subject the offender to prosecution. Nor is it necessary that the expedition should have been exhibited in the United States in martial array or under military organization or discipline. If the members composing the expedition were to have leave as passengers on merchant or passenger vessels, without arms or equipments, to meet upon some coast foreign to the United States, there to be equipped and to be employed against a friendly power, that would fall within the prohibition of the statute. Whether the expedition is an illegal military expedition, does not depend

upon its employment in the United States, but its ultimate destination and object. If its ultimate destination is a foreign state at peace with the United States, and its object hostile to the government or people of that state, or in opposition to their institutions and laws, and the expedition was begun by any arrangements among the men within the United States, or by preparations made there, then the act of Congress has been violated by all who are members of the expedition, and all who in the United States have knowingly and willfully contributed to its preparation.

If the question were decided in the light of this opinion, can it be said that this Government has adopted the means necessary to prevent the opening of subscriptions for the purpose of collecting funds, provisions, munitions of war, means of transport, and the purchase of bonds by the Cuban club of New York, for the purpose of promoting and aiding the insurrectionary war in Cuba?

The Secretary of State concludes his reply to the note of the undersigned by setting forth the reasons why the Department of State finds no analogy between the case of the Virginius and that of the Alabama, or that of any other of those vessels which were equipped in the ports of Great Britain during the civil war in the United States, and were submitted to the tribunal of arbitration at Geneva, pursuant to the treaty of Washington.

Those reasons are the absence of a state of war between Spain and the insurgents in Cuba. The circumstance that the Virginius was not equipped, armed, or manned in the port of New York as a regular vessel of war; that that vessel was not employed to cruise on the high seas, destroying the mercantile marine of Spain; that Spain did not demand damages for injuries inflicted on Spanish subjects as such, but damages resulting to Spain in her character as a nation or government, in consequence of the relations which she alleges to exist between the acts of the Virginius and the present insurrection in Cuba; but, notwithstanding this want of analogy which is said to exist between the complaints occasioned by the Virginius and those to which the acts of the Alabama gave rise, the Secretary of State insists that the formal declaration of the arbitrators at Geneva, relative to what are called "indirect claims," presented by the United States, is a decisive argument against the claims which are now presented on behalf of Spain.

It is enough to say in reply that the undersigned never thought of appealing to the acts of the tribunal of Geneva as an authority, but as a criterion placed there by the United States to express and define the limits to which the fulfillment of the duties of watchfulness and repression should be extended. Nor was it his intention to restrict the complaint which he is charged to present to asking for a compensation for damages and losses of nation from nation; but he proposed to include also the damages inflicted by the acts of the Virginius on subjects and property of Spain in the island of Cuba; so that the precedent invoked by the Secretary of State is in every respect inapplicable to the matter under discussion: first, because, according to the admission of the Secretary of State himself, it does not rest on analogous facts; and, second, because the decision of that tribunal has nothing to do with the peculiarities of the present case.

The case would be different if the claims known under the name of "Fenian claims," presented, as the undersigned has understood, by the government of Great Britain, and now existing against this Government, for damages and wrongs inflicted on itself and on its subjects, had been submitted to the tribunal of Geneva, and the arbitrators had decided that that class of claims are not, according to the principles of the law of nations, matters for the concession or appraisement of damages and losses; and, if it had agreed or determined that the United

States had been remiss in the fulfillment of their duty, then, and not otherwise, would the precedent have been applicable to the present occasion. For this reason, and in order to better insure the continuance of the good relations existing between the two governments, the undersigned deems it his duty to submit to the consideration of the honorable Secretary of State some of the most notable of the series of incidents which have given rise to the reclamation that he is intrusted with presenting to the friendly consideration of the Government of the United States.

The insurrectionary uprising which took place at Yara in 1868 did not find extensive sympathies in the island of Cuba, and, although the superior political authority was badly provided as regarded the question of material force for encountering that traitorous manifestation, it was but a little while before its locality was limited to the eastern part of the island, where, as the consul, Mr. Hall, wrote to the Secretary of State, Mr. Seward, on the 18th of November, 1868, "the wild nature of the country, and the complete absence of railroads and even of ordinary roads, militated greatly in favor of the insurgents." A general uprising of the Creole population not having taken place, on the one hand, as had been expected by Aguilera and Cespedes, and the disposition, on the other hand, to temper justice with mercy, induced the captain-general to publish what from its spirit might be regarded as a general amnesty, and by favor of which many Cubans left the island, a large part of them coming to settle in the United States.

It was soon discovered that these disaffected persons, among whom were various owners of valuable estates in the island of Cuba, had returned, in their place of refuge, to their perfidious intrigues against the authority of Spain in Cuba, and that for said purpose they were selling or bargaining to sell their landed estates.

The want of popular support, before alluded to, and other causes, reduced the insurgents in the eastern extremity of the island to the condition of wandering bands, destitute of arms and munitions of war, with no other access to the ports and places where it was possible to communicate with countries beyond the Gulf than those which temporarily and under certain circumstances may be held by parties of bandits or rebels in all countries of the world. With the view of preventing their property and effects in the island of Cuba from being sold, and their proceeds applied in stirring up and sustaining the rebellion, the superior authorities, not without waiting for manifestation of disloyal sentiments and purposes, decreed the revision by the government of such sales and conveyances.

It is certain that, in the civil war of this country, the Federal Government was not slack in its measures of seizure and confiscation when the necessities of the case seemed to require it.

The Spanish government on its part took great care that, in the execution of its decrees, citizens of the United States who were owners of property in Cuba, and innocent of any participation in the acts of the rebels, should not be unduly injured, but it was never easy to harmonize suavity with justice in cases, for example, of eminent banking and commercial houses of New York and other places, who lent their names to a false pretext of being real purchasers by payment of the entire value, when in reality they only held the estates in trust for the purpose of covering and protecting persons who were engaged in violating the laws of Spain.

Isolated cases have doubtless occurred—and where does it not happen in the gloomy periods of internal strife?—of injury to property of for-

eign subjects or citizens; but in all of them, the undersigned does not hesitate to affirm, the Spanish government has sincerely and in good faith endeavored to recompense the damages it has occasioned.

The difficulties which presented themselves in carrying into effect a decree which circumstances rendered indispensable, were increased and aggravated by cases of natives of the country, who suddenly showed themselves provided with documents with which they claimed to prove their quality of citizens of the United States, and the no less surprising rapidity with which some persons, who at the breaking out of the rebellion went away from Cuba, maintained that subsequently to their arrival in the territory of the Union they had acquired citizenship in the country to which they had fled, and in consequence thereof asked indemnity for the property which they had left in the island of Cuba; and claims of this character having become numerous, Spain agreed to the establishment of a mixed commission of arbitration to hear and determine them in conformity to law and justice.

The undersigned does not undertake to deny that at times extreme measures have been employed with respect to the personal liberty and to the property of suspicious individuals at the beginning of the insurrection, and after the generous moderation shown by General Dulce, by order of the government at Madrid, only appeared to serve as stimulus to the insurgents to commit acts of the greatest atrocity against loyal subjects of Spain. The rebels inaugurated their movement by burning and destroying sugar-mills and cities, and hence resulted the necessity of carrying into effect severe and energetic measures of repression—measures which rendered legitimate, so far as they could not be defeated, the interests of self-preservation and defense.

But it cannot be said that such rigorous measures are exclusively those of Spain. The code of instructions for armies in the field, published by the War Department of the United States during the civil war which terminated in 1865, authorized the destruction of every kind of property belonging to the enemy, and the penalty of death on every one who, in a section of territory occupied or subjected by one of the Federal armies, attempted to resist said Army or the authorities which it had established. The seizures ordered in Cuba had a precedent, for want of others, in the laws passed by the Congress of the United States, and which imposed on the President the duty of taking possession of the property of the rebels of the South and of confiscating it. Notwithstanding the great circumspection and caution which may have been observed by the authorities of the United States, the fulfillment of those laws gave rise to numerous and repeated claims for damages and ill treatment inflicted on foreign subjects, and in consequence thereof a mixed commission has held a number of sessions in Washington to award indemnities for what was done, for damages inflicted on subjects of Great Britain.

That the insurrection at Yara in October, 1868, did not meet with sufficient support from the people of Cuba, and that its leaders comprehended the want of men, pecuniary resources, and munitions of war, is abundantly proved by the circumstance that as soon as they succeeded in establishing communication with the United States they began negotiations for obtaining funds and fitting out military expeditions.

On the 14th of November, 1868, Mr. Seward, at the time Secretary of State, urgently solicited the attention of Attorney-General Evarts to the rumors that were then in circulation respecting an expedition which was being prepared against the island of Cuba, and the marshal of

New York, Mr. Murray, gave information respecting the matter on the 19th of November of the same year, in the following terms, which are transcribed in English:

It is true that a number of well-known filibusters have opened an office at 498 Broome street in this city for the ostensible purpose of enlisting men for the invasion of the island of Cuba, but really with a view of making money out of the resident Cubans in this city who sympathize with their cause.

On the 19th day of March, 1869, the predecessor in this legation of the undersigned, Señor Lopez Roberts, informed the Department of State that a steamer called the Salvador was hastily preparing to form part of a military expedition against Cuba; and accordingly said steamer sailed from Key West at the beginning of the month of May following without being obstructed in any manner, carrying on board a hundred and fifty recruits and 2,500 cases of arms, which she landed on the 14th of the same month on a point of the island of Cuba called Nuevas Grandes, according to the testimony of one William C. Pinher or Finher, put in the hands of the Secretary of State on the 18th of December, 1869, among several other documents, on which is founded a request for a recognition of belligerency in favor of the insurrection inaugurated by Cespedes. In the Department of State doubtless exist the antecedents of the Mary Lowell. When that vessel was overtaken and captured through steps taken by the agents of Spain at Ragged Island, her fitters-out had the impudence to pretend that she was bound to Vera Cruz to accomplish an ordinary operation of peaceful commerce, and even claimed damages of Spain for the capture. The testimony, however, existing in the Spanish-American commission at Washington fully proves the falsity of that assertion. The principal furtherers of that expedition were Doctor Bassora, Plutarco Gonzales, and Doctor Arango y Mora. The military and naval officers were Captain Bonneau, F. T. Cisneros, and Thomas Jordan. This brig, laden with arms and munitions of war, took out a fraudulent clearance for Vera Cruz from the custom-house at New York in January, 1869, her true destination being Rum Cay, at which point she was to join the steamer Henry Burden, in command of her owner, Campbell, and on board of which were Thomas Jordan and forty or fifty American and Cuban soldiers. From Rum Cay the two vessels mentioned proceeded to Ragged Island, where the arms were all to be placed on board the steamer and the entire expedition landed on the coast of Cuba. During their stay at Ragged Island the expeditionists passed the time in military exercises, but at the moment when the voyage was arranged, the vessel which was conveying them, together with her cargo of arms, was captured by a Spanish cruiser. The steamer Henry Burden escaped, and the greater part of the expeditionists succeeded in returning to the United States. This was the first attempt of Thomas Jordan, a person notorious for the numerous offenses which he has committed against the laws of the United States and for being in quality of agent of Aldama, the present chief of the Cuban junta in New York, at which point, according to news received by the undersigned, he continues projecting hostile expeditions against the dominions of Spain.

When it came to be understood in the island of Cuba that there was meditated an invasion of its soil proceeding from and organized in the United States, the superior political government, in manifestation of its firm purpose that the insurrection held at bay in the interior should not receive aid from abroad, published on the 24th of March, 1869, a decree in which it was said that every vessel captured on the high seas in proximity to the island, and which had on board men, arms, and munitions, or other articles which could in any manner contribute to the

promotion, encouragement, or maintenance of the insurrection, should be held for an enemy and treated as a pirate, in accordance with the ordinances of the tribunals of marine, and that every person captured on board of such a vessel should be put to death by arms.

On the 3d of April, 1869, the Secretary of State of the United States made known to this legation the regret which he experienced at seeing that this decree had disregarded the treaty of 1795, in virtue of which, according to the honorable Mr. Fish, the citizens of the United States and their vessels had the right to carry to the enemies of Spain every kind of goods which were not contraband of war, subject only to the requirements of a legal blockade, and that, therefore, the United States could not consent that any of its citizens should be punished for merely using this privilege.

Subsequently, on the 7th of July, 1869, the same superior authority, in the exercise of an unquestionable right of sovereignty, closed all the ports and places of the Banda Oriental to commerce of importation and exportation, except a few which were mentioned, in which there were custom-houses; it prohibited the introduction of powder, arms, and warlike stores, whether military or individual, for the service of the insurrection; it decreed the seizure of the vessels and the punishment of the crews that were engaged in conveying said goods, persons, or material, and denounced as a pirate every person who should enter the island with armed hand.

Justly uneasy at the success attained by the Cuban insurgents who were refugees in the United States, and at the tone of the note to which reference has just been made, Señor Lopez Roberts, bearing in mind the proclamations which had been issued under similar circumstances by Presidents Taylor in 1849, Fillmore in 1851, Pierce in 1855, and Buchanan in 1859, in which every citizen of the United States was warned and advised against every kind of fellowship with hostile expeditions against the island of Cuba, and was notified that whatever might be the punishment inflicted on them they would not be protected by this Government, intimated to the Secretary of State, in a communication dated the 5th of April, 1869, the propriety of issuing a new proclamation of the same purport.

Unfortunately the intimation of Señor Lopez Roberts was not heeded, since the Secretary of State replied: "At present this Government is not aware of any invasion of the island of Cuba, or of any other possessions of Spain, threatened from the United States, nor is any such believed to be in the course of preparation."

The note of the Secretary of State refusing to accede to the wish of this legation that a presidential proclamation should be issued bore date of the 17th of April, 1869, and twelve days afterward, as appears from the declaration of one Welsh, transmitted to the Department of State on the 1st of June, 1870, that person had engaged to carry from Beaufort, in North Carolina, to the coast of Cuba, in the schooner called Grapeshot, of which he was captain, an expedition in command of one Antonio Jiminez. In consequence thereof Welsh proceeded from Beaufort in the beginning of May, touching on the way, on the 27th of the same month, at Turk's Island, at which point the American consul went on board and participated in manifestations and speeches in favor of the Cuban insurrection; and on the following day, the 28th, the expedition landed at Guantanamo, in the southeastern extremity of the island of Cuba.

The expedition of the Grapeshot is memorable on account of claims which were made against Spain for the shooting of two individuals

called Speakman and Wyeth, captured with arms in hand immediately after the landing. In view of the evidence of the captain of this schooner, there is no doubt that these two individuals, far from being innocent passengers, put ashore in Cuba against their will, as was falsely alleged, sailed from the United States, remained on board of the Grapeshot, and finally landed in Cuba with the well-meditated purpose of taking part in acts of death and destruction in which were engaged the wandering bands of Cespedes.

In three weeks after the said reply of the Secretary of State, the steamer Perit, the property of Messrs. Spofford, Tileston & Co., of New York, and commanded by George G. Hetcher, was falsely cleared at the custom-house of that city for Kingston, in the island of Jamaica, with a large cargo and three hundred military men, under the orders of the same Thomas Jordan who was one of the officers of the expedition of the Mary Lowell. In the packet of instruction given by the owners of the steamer to the captain, dated 4th of May, 1869, it is said: "The vessel under your command will carry a clearance for the port of Kingston, in Jamaica, but before arriving at that place you will stop and will unload at any port designated to you by Francisco J. Cisneros, agent of the shippers, who will be on board, or, in his absence, at whatever place may be indicated by General Thomas Jordan, who will also be on board. Until the unlading has been effected, you will consider yourself under the orders of the above-mentioned individuals. If, on the way to the port which may have been indicated to you for the purpose of unlading, you should be followed by a cruiser or armed vessel, you will await orders from said individuals with respect to avoiding said cruiser or armed vessel, and you will ask them to give you your instructions in writing."

This expedition landed at Bahia de Nipe in nine days after its sailing from New York. The news was published in the newspapers of that city about the time of the departure of the Perit, and it never has been denied to the knowledge of the undersigned that some of the agents of Marshal Murray had knowledge of what was being plotted, because, their intervention having been sought in the matter, they lent their assistance in having released a young man whose inexperience had been abused in enlisting him for the expedition.

To this day neither the vessel nor her owners, nor any of the persons who contributed to said formidable enterprise, has been brought to punishment.

As the United States complained that British territory has served the confederates as a maritime base and arsenal from which they were provided with munitions of war, so in like manner could Spain complain that from the month of October, 1868, the territory of the United States has been the only and the prolific purveyor of men and munitions of war for the insurrection of Cuba.

The distinguished jurisconsult who spoke in behalf of the United States at Geneva uttered these words:

> All commercial contracts, including the raising of money by loan, the building or fitting of vessels, the sale of arms or munitions or other supplies in aid of insurrection or domestic rebellion in a foreign state, are absolutely condemned as immoral by the laws of England, and are proscribed by the courts of justice.

Soon after the executive power at Washington had refused to issue the proclamation whose opportuneness had been indicated to it, there commenced, as the undersigned proposes to show, active, constant, and systematic exertions on the part of the Cuban junta to supply from the United States the want which the rebels had so keenly experienced, as *well of men* and cash as of arms and vessels.

The ship-owners did not step forward to freight their vessels for such illicit undertakings, and consequently the junta found themselves obliged, in many cases, to acquire them as property, while a citizen of the United States, bought for this purpose, gave his house as the true owner. The insurance companies refused to issue policies. Funds were obtained by means of subscriptions, and principally by the sale of bonds issued in the name of the so-called republic of Cuba, by its agents in this country; but as said bonds were not payable until the insurrection should succeed in wresting Cuba from the authority of Spain, this condition of eventual and contingent payment made of each purchaser a new participator in the designs of the insurrection. The zeal of the junta of New York and the hopes that they had of escaping punishment caused its members to put aside all reserve, as was remarked by the consul of Spain in the beginning of June, 1869, to Mr. Pierrepont, then district attorney of the United States, and consequently that functionary immediately submitted the facts to a grand jury, who, on the 16th and 23d of that month, laid before the court presentments for violation of the sixth section of the law of April, 1818, against José Morales Lemus, (titled minister of the so-called republic,) José M. Bassora, (secretary of the junta,) Francisco Fesser, Mariano Alvarez, José M. Mora, (implicated in the affair of the Virginius,) Ignacio Alfaro, William C. Ryan, (shot recently at Santiago de Cuba,) Doctor J. J. McNulty, Doctor Dubose, (both subsequently found on board of the Hornet at Philadelphia,) and various others.

All these individuals were apprehended and called to judgment, and having given security that henceforth they would respect the laws, and would present themselves when asked for, they were set at liberty.

Only the district attorney at New York, or the Attorney-General at Washington, could have compelled the trial and punishment of these malefactors, but up to this day nothing of the kind has been attempted. Ryan escaped by force from the officer who had him in custody, but although he was arrested at a subsequent period, never was he punished for any of his offenses until he was captured on the Virginius.

Hardly had the mentioned individuals of the junta been set at liberty under security when they began again their intrigues to send a grand expedition on the steamer Catherine Whiting, which, thanks to the energy displayed by Marshal Barlow, in virtue of orders from Washington, they were completely baffled.

The expeditionists were arrested, but immediately set at liberty without punishment. The vessels were seized previous to proceedings of confiscation, but they were afterward restored to their owners, as happened at a subsequent period with the Hornet. In a word, nobody suffered the slightest penalty for this violation of the law.

At the same period of which we have just been treating, that is to say, at the time when the executive power at Washington refused to issue the proclamation solicited by this legation, the Cuban junta of New York concerted measures to put on the ocean a vessel of war, completely armed and equipped, under the flag of Cespedes.

They were not long in gathering funds, and in the beginning of July, 1869, the steamer Hornet was purchased from the United States, as happened with the Virginius, and taken to Philadelphia for equipment; and shortly after said steamer was denounced to the authorities by agents of the Spanish government, they having sufficient reason therefor. On the first day of August she was falsely cleared at the custom-house at Philadelphia for the port of Queenstown. In going down the river, having on board McNulty and Dubose, two of the individuals pre-

sented at New York, she was stopped by the custom-house officers, but released afterward, notwithstanding that Marshal Barlow had made known to the Attorney-General that, in his judgment, said vessel had an illegal object, as the marshal disclosed in these significant words: "She is bent upon mischief." From Philadelphia the Hornet went to Halifax, and thence returned to the jurisdiction of the United States, receiving her arms off the coast of Massachusetts, and her coal and provisions off that of New York, from the same tug which subsequently supplied the Virginius, after which she hoisted the insurgent flag of Cuba, and sailed on her piratical errand.

The legation of Spain informed the Department of State, by a note dated September 28, that these things were going on. The marshal in New York had knowledge of them early enough to have prevented their accomplishment, as appears from a communication addressed by that functionary to Attorney-General Hoar, under date of October 1, 1869, had it not happened, as he says, that "*there was nothing to prevent it.* On Saturday last all the revenue cutters were withdrawn from under my order, and removed from their stations in the harbor without any information to me of the fact. I only accidentally found it out, and the harbor has, since that time, been free from cutters and detectives to stop anything."

Being forced by stress of weather, the Hornet took refuge at the mouth of Cape Fear River, having on board one hundred and sixty seamen, eight officers, and eight cannons, and when the custom-house officers visited her she was only able to show them a commission issued by the so-called republic of Cuba.

On the 3d of October, 1869, the collector of the port of Wilmington, N. C., asked the Secretary of the Treasury, at Washington, for instructions, and on the day following the vessel was seized for violation of the third section of the neutrality law. Her officers were arrested and examined before a United States commissioner, and having been found guilty, were sent, for trial, to the eastern district of New York. The United States, however, never really instituted legal proceedings against them, and they were finally discharged.

A petition was presented to the court at Wilmington for the surrender of the vessel, as being the property of the republic of Cuba, but this petition was denied by the judge, as coming from a government or body-politic whose existence was not known, and the vessel was consequently condemned and ordered to be sold. The Hornet was not sold, but was delivered to a partisan of the Cuban insurrection, in consideration of the payment of $2,500 to the United States as the costs of the prosecution, (no account was taken of the expense to which Spain had been put,) bail being also furnished in the sum of $50,000 that she should not again be employed in acts declared illicit by the laws of the United States. The vessel immediately returned to New York, and plans were again set on foot to use her for the same purpose as before.

In vain were the protests of the consul-general of Spain in New York. The correspondence which passed between that functionary and the district attorney, and between this legation and the Department of State, in December, 1870, in relation to this vessel, was published among the documents sent to Congress by the President on the 4th of December, 1871; and at the close of the first volume of "Documents relating to the treaty of Washington," it is admitted by the Department of State that the Hornet conveyed another military expedition to Cuba, and that, having been blockaded in the harbor of Port-au-Prince by a Spanish war-vessel, she succeeded in making her escape through the interposition of

the United States, without any steps having been taken with respect to the vessel or to the aforesaid bail of $50,000.

The honorable Secretary of State cannot deny that the original fitting out of the Hornet, together with her arming off the coasts of Massachusetts and New York, constituted *a hostile act* against Spain, committed within the jurisdiction of the United States. In view of the facts which have just been stated, it is impossible to argue that a simple commercial operation was had in view, with goods contraband of war. The Hornet was an armed cruiser, just as was the Alabama, with this difference, that the former of these vessels was armed and equipped entirely within the jurisdiction of a friendly or neutral country, which was not the case with the latter. In fitting out this vessel the members of the Cuban junta and their partisans violated the acknowledged rights and duties of asylum, since they made use of the ports of the United States as a basis for their naval operations against Spanish commerce, and, under the protection of their asylum and commercial transactions in contraband goods, they did what in fact constitutes *war* against a friendly country.

The undersigned has dwelt at some length upon these five military expeditions, conveyed by the Salvador, the Grapeshot, the Mary Lowell, the Catherine Whiting, and the Hornet, since they took place at such brief intervals either before or after the refusal of this Government to issue the proclamation referred to, and of its having thus furnished ground for, and in a great measure rendered necessary, the rigorous decrees promulgated in Cuba in relation to foreign vessels, to the seizure of the property of suspected persons, and to the enforcement of the military penal code against the enemies of Spain captured on the island with arms in their hands. The expeditions already enumerated were speedily followed by others, as the principal of which may be mentioned those of the Lillian, George V. Upton, Florida, Edgar Stewart, E. D. Webster, Anna, Fanny, and Virginius.

The Lillian sailed from Cedar Keys, Fla., October 5, 1869, having Eloy Camacho on board as mate. This was the same person who had charge of the Spanish transport Comanditario when that vessel was surrendered to the insurgents, and the same who subsequently sailed from New York on board of the Virginius. Said vessel carried a large cargo of arms and upward of five hundred recruits, and was under the command of the so-called General Goicouria, the same who was arrested in New York on board of the Catherine Whiting, and subsequently discharged by Commissioner Betts.

The Government of the United States had ample information and notice with regard to this expedition.

The military commander on board of the George V. Upton was one T. J. Cisneros, the same who, in company with Thomas Jordan, took part in the expedition of the Mary Lowell and in that of the Perit. Her captain, Dornin, was second captain on board of the Hornet at the time of the detention of that vessel at Wilmington, and he was set at liberty under the circumstances already referred to. The Upton sailed from Brooklyn, N. Y., May 15, 1870, with one hundred and seventy-eight recruits. Even before reaching Sandy Hook she took a steam-lighter on board, for the purpose of effecting a landing on the coast of Cuba, which was done eight days afterward; and while she was still near New York she received a cargo of arms, in accordance with an arrangement previously made, from the schooner Quickstep. The Upton went from Cuba to Aspinwall, and on the 30th of May, 1870, she took another expedition, which she also landed in Cuba on the 11th

day of June of the same year, returning to New York on the 20th of the same month.

For these acts the Government of the United States inflicted no kind of penalty either upon the vessel, her owners, or the persons who fitted her out.

From an examination of the affidavits sent to the Department of State December 15, 1869, by the Cuban junta of New York, in support of the claim of the insurgents to be recognized as belligerents, it appears that, shortly after the breaking out of the insurrection, one Manuel Quesada had the chief control of everything relating to military affairs, and that he was succeeded in this position by Thomas Jordan, a citizen of the United States, and a certain Agramonte. It further appears, from the affidavit of Adolfo Varona, that this Quesada was sent to the United States in 1870 by Cespedes in charge of what was called a foreign mission, it being his duty to organize and direct military operations, and it also appears that this same Quesada for a long time had the military command of the Virginius.

On the 8th of December, 1873, the aforesaid Quesada published a statement in the Herald of that date, the heading of which was as follows: "The representative of the Cuban Republic in foreign countries to His Excellency the President of the United States." In said statement the assertion was made that fourteen steamers, sixteen war-vessels, and forty thousand rifles had been purchased for the benefit of the insurrection. It is unnecessary to say that this enumeration does not include the vessels which were only hired or chartered. The article in question being a curious one in another point of view, inasmuch as it reveals the reasons why a recognition of belligerent rights was so earnestly solicited, an extract from it is given below:

When this population decided to break the ties which bound them to the mother country, propositions were made to inaugurate the movement in April, 1869, at which time it was thought all the arms and necessary supplies could be obtained and properly distributed; but the intention having been discovered by the Spaniards, the outbreak was anticipated by several months, and on the 10th of October of the year previous it took place. The Cubans preferred to go to the field without arms, rather than remain and be executed in cold blood by the Spaniards. *From that moment the only question has been how to obtain arms from abroad.* The Spanish government, being well aware that the oppressed people of the Great Antilles had means enough to arm their forces and to create a navy, confiscated the property of a great part of them. This property amounted to several hundred of millions of dollars, as can be proved by the official records in Havana. This measure could not, however, prevent the patriots from buying arms, though it diminished, to an immense extent, the revolutionary resources. By private subscription of Cubans only, there have been purchased 14 steamers, 16 sailing-vessels, and 40,000 rifles. Unfortunately, as the requisite funds could not be collected rapidly, it was impossible to apply them on as large a scale as necessary to evade the Spanish blockade, and not to break, in any respect, the neutrality laws of this country. The expeditions, sometimes owing to the scarcity of resources, and at others to the want of experience—natural under the circumstances—have not always arrived at their destinations. It was essential to employ a greater amount of money than could be obtained from private subscriptions. There were three methods of raising such money—sending privateers to sea to prey upon Spanish commerce, exchanging for funds those products remaining within the extent of the insurgent lines, and the negotiation of a foreign loan. To the first was presented the obstacle that the worthy representatives of the Cuban republic at that time did not dare to assume the responsibility, as they were made aware that the American Government would not view favorably the existence of Cuban privateers when it was pressing the Alabama claims. To the second existed the obstacle that Cuban belligerency had not been recognized, and it was impossible to excite the spirit of gain to engage in any enterprises the object of which was to run a blockade. The third had for its obstacle that all the European and some American houses disposed to enter upon its negotiation imposed, as a *sine qua non* condition, the previous recognition of Cuban belligerency by the United States. Consequently, the main object of all our diplomatic efforts has been during a certain time to bring about such *recognition.*

This statement, and various other well-known circumstances, place beyond all question the fact that the insurrection has received life and material assistance from the United States, which have served as its treasury, its arsenal, and as a base for its naval operations. Had it not been for these illicit aids and hopes it would long since have ceased to exist and to jeopardize the traditional relations of peace and friendship of two powerful nations.

With regard to many of the expeditions which have been conveyed, as already remarked, from the United States to Cuba, either the legation or the consular officers of Spain have given timely and special notice to the Department of State or to the local authorities of this Government, and it must be admitted that in the case of the Catherine Whiting the authorities of New York acted with energy and efficiency. It was unfortunate that the powers conferred by the President upon these authorities on the 13th of July, 1869, were withdrawn from them, as is stated by District Attorney Barlow in his aforesaid communication to Attorney-General Hoar, which bears date of October 1, 1869. But, even if this had not occurred, and if the diplomatic and consular agents of Spain had not given ample notice of what was going on, as was done by Mr. Lopez Roberts in his communication of April 5, 1869, and others of subsequent date, the responsibility of this Government would have been the same. In the argument presented by the United States to the Geneva tribunal, the following is laid down as a principle of international law in relation to vessels which eluded the vigilance of the English authorities:

> That they were not complained of or discovered by the minister of the United States does not relieve Great Britain of its duty of due diligence to discover them and to prevent their escape. The duty would have existed if misfortune had deprived the United States of such a representative, or if broken diplomatic relations had removed him from the kingdom.

What a commentary, moreover, upon the failure of the Washington Government to issue a proclamation, are the words which were uttered at Geneva, whereby it was said that England had issued no proclamation, or circular-letters, in order to cause the proper officers to realize "any duty of vigilance to detect, of promptitude to declare, of activity to discourage the illegal outfit or dispatch of vessels in violation of international duty toward the United States."

It is true that, early in 1870, with a view to facilitating such judicial proceedings as might be commenced, and also in order to afford the utmost dispatch in the courts when it might be necessary, the Secretary of State indicated to the legation of Spain the propriety of informing its consuls that they would be allowed to present directly to the competent authorities of the United States "any *legal* proof that they might have obtained concerning an infraction of the laws." In consequence of this indication, the consular agents of Spain addressed communications relative to the Hornet to the said authorities on the 8th of December, 1870, and subsequently to the district attorney, Mr. Bliss. The district attorneys, however, in all cases replied that they had no power to take preventive measures in the absence of such legal proof as would render conviction certain. It is not necessary to say that it is very difficult for the consuls of Spain in this country to procure such proof in this country. It is in the very essence of political sovereignty, that while Spain has the widest latitude of political power within her own territory, she has none in the United States. Any legal action on her part is null and void here, since it lacks the legal authority which alone could render it effective, and because Spain has no control either over

the officers of justice or over the means which are required in order to discover a crime and to furnish legal evidence of its commission. She is not able to compel witnesses to appear and answer questions, and if, from time to time, a witness appears who is ready to tell the truth, Spain has no power to detain him while awaiting the pleasure or the convenience of a district attorney in cases in which it is necessary to bring the matter before the courts. If, then, a witness absents himself, or gives ear to the emissaries of the parties accused, the consuls of Spain find themselves exposed to unjust animadversion, while they cannot defend themselves, with due regard for their own decorum, either in the courts or elsewhere. The difficulties and inconveniences which are experienced by diplomatic and consular agents in discovering and furnishing evidence of crimes against a foreign jurisdiction within such jurisdiction, under established judicial and administrative systems, could not be better set forth than they are in a note addressed to Mr. Seward by Mr. Adams, under date of February 9, 1865, at which time the latter was minister of the United States in England.

The undersigned deems it unnecessary for him to add that it is not his intention to criticise the courts of the United States. In the foregoing remarks he has only desired to allude to the failure on the part of the authorities to take any initiative steps, and, being aware that the courts of justice established for the punishment of crimes against the state only act when a case is brought before them by the state, he complains that the state did not take measures for the prosecution and punishment of the sympathizers with the Cuban insurrection, seeing that, owing to the lack of such measures, certain acts which, in their inception, only constituted misdemeanors of individuals against the state, grew into an offense of the State against Spain, for which the latter is entitled to ask reparation.

After having referred to acts of this nature, and to the circumstances under which they were committed, the undersigned desires to call the attention of the honorable Secretary of State to the true definition of the duties and obligations of the United States, in the light of which these acts should be judged. The undersigned is very far from desiring to diminish or curtail the right of asylum for political offenses. The wisdom of the general principle which denies ex-territorial jurisdiction to criminal laws is acknowledged by all, and the undersigned is not aware that the treaties concluded for the extradition of fugitives from justice, even on account of grave offenses not of a political character, are comparatively modern. The undersigned is also aware that the United States, like other countries, act under a laudable impulse of humanity in offering a refuge and asylum to those whom revolution, civil war, or political proscription have cast upon their shores. He would certainly not wish to see any impairment of the civil and individual liberty, of the freedom of speech and of the press, or of the security against illegal arrest or prolonged detention of person or property which the institutions of the great republic guarantee to all its inhabitants. These benefits of asylum, however, in favor of political refugees, as they have certain rights and privileges, likewise have corresponding duties and obligations, both as regards those to whom they are granted and the nation which grants them. An asylum signifies security to one fleeing from pursuit, but not a means of molesting his pursuers with impunity, or of converting his place of refuge into an arsenal and fortress from which to attack them. No state should permit a number of political emigrants to abuse the protection of its soil so as to attack with impunity, or in any manner to molest, the government

under whose laws they live, or the one whose jurisdiction they have abandoned. The United States should not, therefore, permit Cubans who have taken refuge on their soil, either on account of political or other offenses, to use their territory to establish and maintain an administrative center, such as the Cuban junta in New York, through whose instrumentality hostile expeditions have been, and still continue to be, sent against the possessions of Spain; and it must be observed that the permission of tolerance granted to the Cuban refugees, in the use which they have made and still make of the territory of the United States, is not only a want of friendship and neutrality, but that it might even be characterized as a really hostile act.

The undersigned will not weary the honorable Secretary of State with numerous quotations or the allegation of numerous antecedents in support of these principles of international law. One or two will suffice. It is an established maxim of British jurisprudence that by the common law of England the law of nations is recognized as forming a part of that jurisprudence, and numerous cases are on record in that country in which the principle has been established that a libelous article, written against a foreign sovereign or government, subjects its author to the penalty provided for libel. In the case of Peltier, a royalist, prosecuted in England for slander of the First Consul during the peace of Amiens, Chief Justice Ellenborough explained the law to the jury in the following terms, as will be seen by reference to Howell's State Trials, vol. 28, page 230: (236?)

I lay it down as law that any publication which tends to degrade, revile, and defame persons in considerable situations of power and dignity in foreign countries may be taken to be and treated as a libel, and particularly when it has a tendency to interrupt the pacific relations between the two countries. If the publication contains a plain and manifest incitement and persuasion, addressed to others, to assassinate and destroy the persons of such magistrates, the tendency of such a publication is to interrupt the harmony subsisting between the two countries, the libel assumes a still more criminal complexion.

The principle above enunciated never went, in England, as the undersigned believes, as regards its application, beyond what is provided for cases of libel; but its general application, as a principle of international law, has been solemnly advocated on other occasions, as is shown by a speech delivered by Lord Lyndhurst in the House of Lords, March 4, 1853, in which he said:

I will first take the case of British subjects. If a number of British subjects were to combine and conspire together to excite revolt among the inhabitants of a friendly state—of a state united in alliance with us—and these persons, in pursuance of that conspiracy, were to issue manifestoes and proclamations for the purpose of carrying that object into effect; above all, if they were to subscribe money for the purpose of purchasing arms to give effect to that intended enterprise, I conceive, and I state with confidence, that such persons would be guilty of a misdemeanor, and liable to suffer punishment by the laws of this country, inasmuch as their conduct would tend to embroil the two countries together, to lead to remonstrances by the one with the other, and ultimately it might lead to war. I think my noble and learned friends who are now assembled here, and who perform so important a part in the deliberations of this house, will not dissent from the opinion I state with respect to British subjects. Now, with respect to foreigners. Foreigners residing in this country, as long as they reside here under the protection of this country, are considered in the light of British subjects or rather subjects of Her Majesty, and are punishable by the criminal law precisely in the same manner, to the same extent, and under the same conditions as natural-born subjects of Her Majesty. In cases of this kind, persons coming here as refugees from a foreign state, in consequence of political acts which they have committed, are bound by every principle of gratitude to conduct themselves with propriety. This circumstance tends greatly to aggravate their offense, and no one can doubt that they are liable to severe punishment. I will put the case in another shape. The offense of endeavoring to excite revolt against a neighboring state is an offense against the law of nations. No writer on the law of nations states otherwise. But the law of nations, according to the decision of our greatest judges, is part of the law of England.

The doctrine of jurisprudence was subsequently confirmed by Lord Brougham, Lord Truro, and Lord Chancellor Cranworth. Phillimore, in his valuable treatise on international law, expresses himself in the same sense, as follows:

International law considers the right of self-preservation as pair and paramount to that of territorial inviolability, and, where they conflict, justifies the maintenance of the former at the expense of the latter right. The case of conflict, indeed, must be indisputable; such a case, however, is quite conceivable. A rebellion or a civil commotion, it may happen, agitates a nation; while the authorities are engaged in repressing it bands of rebels pass the frontier, shelter themselves under the protection of the conterminous state, and from thence, with restored strength and fresh appliances, renew their invasions upon the state from which they have escaped. The invaded state remonstrates. The remonstrance, whether from favor to the rebels or feebleness of the executive, is unheeded, or, at least, the evil complained of remains unredressed. In this state of things the invaded state is warranted by international law in crossing the frontier and in taking the necessary means for her safety, whether these be the capture or dispersion of the rebels or the destruction of their strongholds, as the exigencies of the case may fairly require. In all cases where the territory of one nation is invaded from the country of another, whether the invading force be composed of the refugees of the country invaded or of subjects of the other country, or both, the government of the invaded country has a right to be satisfied that the country from which the invasion has come has, neither by sufferance nor reception, openly aided or abetted it.

Lord Palmerston, in a diplomatic note addressed to Lord Ponsonby, under date of October 6, 1849, adheres to the principle that a state ought not to allow emigrants the use of its territory in order to carry on hostilities against the government from whose jurisdiction they have fled. He says:

The Sultan has duties of good neighborhood to fulfill toward Austria, and those duties require that he should not permit his territory to be made use of as a place of shelter, from which communication should be carried on for the purpose of disturbing the tranquillity of any of the states which compose the Austrian Empire. The Sultan is, therefore, bound to prevent these Hungarian refugees from hovering upon the frontier of Hungary or Transylvania, and he ought to require them either to leave the Turkish territory or to take up their residence in some part of the interior of his dominions, where they may have no means of communicating with the discontented in the Austrian states.

In violation of these precepts and examples of the duties owed to each other by countries which are bound by the ties of peace and friendship, when intestine disturbances unfortunately exist in one of them, the Cuban refugees in New York have, during the past four years, more than once succeeded in causing the United States to fail to perform the aforesaid duty. This is principally true in the case of the Virginius during the time which elapsed between the month of October, 1870, and that of November, 1873, in which Spain and her subjects on the island of Cuba have suffered serious detriment by reason of the acts of the said vessel. No small number of those engaged in the ill-fated expedition which was frustrated by the Tornado were recruited in New York for the purpose of invading the island of Cuba, and sailed for their destination in October last on board of the steamer Atlas.

The accompanying statement, made before the consul-general of Spain at New York by a person who took part in the aforesaid expedition, may not be altogether unworthy of credit; and, in addition to what is therein expressed, there is ground for the belief that other evidence might be procured to the effect that upwards of forty of the persons who were on board of the Virginius were collected in New York, and sailed from that port by the steamer Atlas. The names of these persons do not appear in the list of passengers of the aforesaid steamer, but there is no doubt that there were nearly one hundred persons on board of her who had been previously organized and drilled in the port of departure.

The undersigned believes that before the sailing of the expedition which was conveyed by the steamers Atlas and Virginius, the district attorney "had sufficient reason" to believe that it was on foot, however true it may be that the consul-general of Spain at New York was unable, at that time, to furnish legal proof sufficient to bring to trial the parties implicated, who had been made known to him, as had also their places of meeting.

In the view of these facts, and of all the circumstances which he has frankly and fully stated in the interest of the long-continued friendship and good understanding between Spain and the United States, the undersigned confidently hopes that the Government of the United States will recognize the right of Spain and her subjects to ask reparation for the injury which has been caused in the past by the acts of the Virginius, and security and guarantees for the future, that the agents of the Cuban insurrection will not be permitted to use the territory of this nation as they have done during the last four years, for the organization and fitting out of hostile expeditions against Spain.

The undersigned avails himself of this occasion to reiterate to the honorable Secretary of State the assurances of his most distinguished consideration.

JOSÉ POLO DE BERNABÉ.

The Hon. SECRETARY OF STATE
Of the United States.

No. 21.

Mr. Fish to Admiral Polo de Bernabé.

DEPARTMENT OF STATE,
Washington, April 18, 1874.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the reception of the note of 2d of February last, which his excellency Admiral Polo de Barnabé, the envoy extraordinary and minister plenipotentiary of Spain, addressed to him respecting the Virginius, and the assumed relations of the United States toward the insurrection in Cuba.

The pressure of business incident to the session of Congress and a severe indisposition have prevented an earlier reply to that note.

The undersigned has observed with regret in Admiral Polo's note harsh expressions and unwarranted criticisms upon the official conduct of officers of the United States, which he feels confident would not have obtained admission to the paper had they attracted the attention of the accomplished minister of Spain, whose sense of justice would not allow him to give expression to what his sensitiveness and regard for the proprieties of diplomatic correspondence would not permit him calmly to accept.

The undersigned finds in the historical part of Admiral Polo's note many misapprehensions of facts, (as the facts are understood by this Government,) and many errors of omission which need to be corrected before entering upon the particular argument respecting the Virginius. The undersigned will endeavor to do this as briefly as possible.

The insurrection which broke out at Yara, in the autumn of 1868, has

had the unusual good fortune of having the justice of the complaints, which it alleges in its justification, recognized by those who are engaged in suppressing it. On the 10th of September, 1869, the minister of transmarine affairs at Madrid, in an official paper, said:

A deplorable and pertinacious tradition of despotism, which, if it could ever be justified, is without a shadow of reason at the present time, intrusted the direction and management of our colonial establishment to the agents of the metropolis, destroying, by their dominant and exclusive authority, the vital energies of the country, and the creative and productive activity of free individuals. And although the system may now have improved in some of its details, the domineering action of the authorities being less felt, it still appears full of the original error, which is upheld by the force of tradition, and the necessary influence of interests created under their protection, which, doubtless, are deserving of respect so far as they are reconcilable with the requirements of justice, with the common welfare, and with the principles on which every liberal system should be founded. A change of system, political as well as administrative, is therefore imperatively demanded.

But while admitting the existence of the injuries which had provoked the outbreak at Yara, the government of the revolution of 1868 refused to remedy them until the armed insurrection should be suppressed. "Spain would already have given all constitutional liberties to Cuba," said Mr. Silvela to General Sickles, "if the unfortunate insurrection of Yara, and the cry of 'Death to Spain,' uttered by some Cubans, had not alienated the sympathies of the nation, and obliged the government to accept the impolitic contest to which it was provoked. The government considers that it can come to no definite decision in regard to the political situation and future government of the island of Cuba until the insurgents lay down their arms and cease the struggle." This would indicate that it is the resistance to admitted wrongs, and not the wrongfulness of resistance, which Spain is endeavoring to repress.

One of the two great questions at issue between the insurgents and the authorities of Spain was understood to be the future condition of the African race in the island. The insurgents, as early as the 26th of February, 1869, decreed the abolition of slavery "in the name of liberty and the people." This act met with no response from Spain. The eloquent Mr. Castellar, when a member of the Cortes, without the responsibilities of government, said:

I am an advocate of abolition in Cuba, with a due regard to all interests. I am an advocate of colonial reforms, and of every possible liberty to Cuba and Porto Rico.

But when, in the turn of events, he attained to power, he was unable to do anything for Cuba, and retired with slavery untouched, and with reforms still a dream.

It cannot be a matter for wonder that persons in other lands sympathized with the great and liberal statesmen of Spain in their convictions that a large measure of reform was needed in Cuba, and held that one of the greatest of all was the abolition of slavery. And perhaps less surprise will be manifested that such sympathizers in other lands could not comprehend why such distinguished statesmen should insist upon subjugating the Cubans, who had taken up arms to resist oppression, before consenting to relieve them from the wrongs which they were admitted to be enduring.

It must be frankly confessed that there were many persons in the United States who shared the theoretical opinions of the Spanish statesmen, but who could not agree in the diametrically opposite policy which Spain pursued toward Cuba under their directions.

It was natural for the people of the United States to feel an interest in the prosperity of Cuba. This and the reasons for it were well understood at Madrid. Mr. Martos, in the presence of his colleagues, Mr.

Becerra and Mr. Rivero, had officially spoken to General Sickles of "the common interests shared by the United States and Spain in Cuba." He said "that whatever retarded the prosperity of the island was injurious alike to both countries; that the welfare of Cuba was of more commercial importance to the United States than to the mother country."

This wise statesman might have added that the interest of the United States in Cuba was heightened by a desire that the deadly struggle on the island might end in the acquisition of self-government, (whether under, or free from, Spanish rule was of course immaterial to an American,) and in the abolition of slavery. Such was undoubtedly the fact. The undersigned feels convinced that these views were shared by the mass of the liberal statesmen of Spain, modified, probably, by the patriotic wish that the island should retain its political connection with Spain. But it could not be expected that foreigners would share in the full warmth of this wish of Spanish statesmen. The mass of the people of the United States certainly gave little heed to the matter beyond the natural preference that a disturbing element of European politics should be removed from the American system.

In the rapid progress of events, however, they, in common with the rest of the civilized world, were soon forced to give attention to Cuban affairs. The authorities in that island began to exercise rights of war in time of peace, and to trample out liberties which their superiors at Madrid desired to maintain and extend.

Admiral Polo expresses the opinion that the insurrection "did not find extensive sympathies in the island of Cuba," and that "it was but a little while before its locality was limited to the eastern part of the island."

Such was not the tenor of the information received at this Department.

It is now more than five years since the uprising, and it has been announced, with apparent authority, that Spain has lost upward of eighty thousand men, and has expended upward of one hundred millions of dollars, in efforts to suppress it; yet the insurrection seems to-day as active and as powerful as it has ever been. And the suggestion that its locality was limited to the eastern part of the island leads one to inquire whether Villa Clara and the other of the Cinco Villas, and the railway between Nuevitas and Puerto Principe, are in that district.

Indeed, until the receipt of Admiral Polo's note, the undersigned had supposed that the extent of the disaffection in Cuba was urged as an extenuating motive for the remarkable series of measures which the undersigned will soon notice.

Soon after the outbreak of the insurrection this Government of its own accord, without being thereto moved by the representative of Spain, caused inquiries to be made respecting "rumors of a projected expedition against Cuba," from New York, with a view, should circumstances require it, to the issue of such instructions as might be necessary for "the defeat of the schemes in question." The officer charged with the inquiry answered that he had made a thorough investigation, and added:

> It is true that a number of well-known filibusters have opened an office at 498 Broome street, in this city, (New York,) for the ostensible purpose of enlisting men for the invasion of the island of Cuba, but really with a view of making money out of the resident Cubans in this city who sympathize with the cause. *But I am happy to inform you that thus far they have been unsuccessful.*

This fact, which exhibits the anxiety of this Government to perform its international duties, is apparantly referred to by Admiral Polo with

a purpose of showing a want of diligence on its part in that respect; since, in quoting the report of the officer, the passage which is *underscored* is omitted.

On the 24th of March, 1869, the captain-general of Cuba issued a decree, which is referred to by Admiral Polo, and from which the following is an extract:

Vessels which may be captured in Spanish waters, or on the high seas near to the island, having on board men, arms, and munitions, or effects that can in any manner contribute, promote, or foment the insurrection in this province, whatsoever their derivation and destination, after examination of their papers and register, shall be *de facto* considered as enemies of the integrity of our territory, and treated as pirates, in accordance with the ordinances of the navy.

All persons captured in such vessels, without regard to their number, will be immediately executed.

A copy of this decree was received at this Department on the 2d of April, 1869, and the undersigned, although but then just entered upon the duties of his office, and greatly pressed with other public matters, requiring immediate attention, put everything aside, by direction of the President, and on the next date wrote as follows to the minister of Spain at Washington:

It is to be regretted that so high a functionary as the captain-general of Cuba should, as this paper seems to indicate, have overlooked the obligations of his government pursuant to the law of nations, and especially its promises in the treaty between the United States and Spain of 1795.

Under that law and treaty the United States expect for their citizens and vessels the privilege of carrying to the enemies of Spain, whether those enemies be claimed as Spanish subjects or citizens of other countries, subject only to the requirements of a legal blockade, all merchandise not contraband of war. Articles contraband of war, when destined for the enemies of Spain, are liable to seizure on the high seas, but the right of seizure is limited to such articles only, and no claim for its extension to other merchandise, or to persons not in the civil, military, or naval service of the enemies of Spain, will be acquiesced in by the United States.

This Government certainly cannot assent to the punishment by Spanish authorities of any citizen of the United States for the exercise of a privilege to which he may be entitled under public law and treaties.

It is consequently hoped that his excellency the captain-general of Cuba will either recall the proclamation referred to, or will give such instructions to the proper officers as will prevent its illegal application to citizens of the United States or their property. A contrary course might endanger those friendly and cordial relations between the two governments which it is the hearty desire of the President should be maintained.

The order to indiscriminately slaughter "all persons captured in such vessels, without regard to their number," could not but shock the sensibilities of all humane persons. The undersigned felt, however, unwilling to object to the execution of the order, except when proposed to be enforced against citizens of the United States.

Almost simultaneously with the receipt of this startling news, Mr. Lopez Roberts, on April 5, 1869, made of the undersigned the request referred to by Admiral Polo, that the President should issue a proclamation to restrain military expeditions against Cuba, accompanying the request with allegations "that piratical expeditions are in preparation against the legitimate government of Spain in Cuba," and that "arms and ammunition are sent there in sailing-vessels and steamers."

In regard to the second point thus stated by Admiral Polo's esteemed predecessor, the undersigned was constrained by a due regard to universally recognized principles of international rights and duties to declare, that in the absence of a recognized state of war, it was no offense in the sailing-vessels and steamers of the United States to carry arms and ammunitions of war for whomsoever it might concern. The undersigned has uniformly said that no government can by the law of nations

be held responsible for shipments of arms, munitions, or materials of war, made by private individuals at their own risk and peril. If a state of war should exist, if Spain should be entitled to the rights of a belligerent, parties concerned in the shipment of arms and military supplies for her enemy would incur the risk of confiscation by her of their goods; but their act would involve no ground of reclamation against their government in behalf of Spain; and consequently no right to invoke the aid of that government in preventing the perpetration of the act. Such it is believed is the established law of nations, and such the received rule even when the shipment of arms and munitions is made from the territory of the country whose citizens may be the parties engaged in the introduction of these supplies for the use of one of the belligerents.

In regard to the first point thus taken by Mr. Lopez Roberts, the undersigned could not but observe that the allegations respecting alleged piratical expeditions were not only wholly unsupported by proof, but were in themselves extremely improbable.

It is quite competent for a state to apply the term of "piracy" by its municipal acts to any offenses, however trivial, and to affix to them punishments it may deem appropriate. But in thus applying the title of a crime known to international law to offenses created by municipal law, it cannot invoke upon the latter penalties which international law denounces against the crimes which the nations of the world recognize as "piracy."

Within its own territorial jurisdiction the application of terms and of epithets, or even the denunciation of punishments, except so far as they may offend humanity or the civilization of the age, might not be objected to; and the undersigned does not at present feel called upon to deny that the penalties thus denounced my be enforced (without right or question by other powers) upon those who may commit the acts to which these terms are applied, within the territory of the state enacting the municipal law. But it would be inappropriate to apply either such definitions of crime or penalties to matters occurring without its territorial jurisdiction, or in discussions with other powers.

Piracy, as an offense against the unwritten but universally recognized law of nations, has been made the subject of many definitions. The definition by Wheaton, as explained by his commentator Dana, would probably be recognized by the courts of all civilized powers.

Wheaton defines this crime "to be the offense of depredating on the seas without being authorized by any sovereign state, or with commission from different sovereigns at war with each other;" and Dana, in his note upon this definition, says "to constitute piracy *jure gentium*, it is necessary, first, that the offense be adequate in degree—for instance, robbery, destruction by fire, or other injury to persons or property—must be committed on the high seas and not within the territorial jurisdiction of any nation; and, second, that the offenders, at the time of the commission of the act, should be in fact free from lawful authority, or should have made themselves so by their deed, or, as Sir L. Jenkins says, 'out of the protection of all laws and privileges,' or, in the words of the Duc de Broglie, 'quin'a ni feu ni lieu;' in short, they must be in the predicament of outlaws."

It did not appear to the undersigned from any evidence that was laid before him at that time by Mr. Lopez Roberts, or from any other source, that any parties were undertaking or contemplating military expeditions from the United States against Cuba, or were proposing to make any "piratical expeditions."

The undersigned therefore felt constrained to reply, on the 17th of the same April, in the following language:

After a careful examination of Mr. Roberts's note, the undersigned fails to perceive the necessity, or the propriety at this time, of a proclamation by the President of the United States, such as Mr. Roberts desires.

The publication of an instrument of the character asked by Mr. Roberts would be the exercise of a power by the President which is resorted to only on extraordinary occasions, and when peculiar circumstances indicate its necessity. Such a power is not to be invoked lightly, or when the laws are in unquestioned vigor and efficiency, are respected by all persons, and are enforced by the ordinary agencies.

At present this Government is not aware of any invasion of the island of Cuba, or of any other possessions of Spain threatened from the United States, nor is any such believed to be in the course of preparation. Mr. Roberts has, on several occasions, intimated to the undersigned the existence of individual or private attempts in different parts of the country to violate the neutrality laws of the United States. In every such instance, as Mr. Roberts very justly admits in his note, the proper officers of the Government have been called upon immediately to vindicate the supremacy of the law, and no single instance is known or is believed to have arisen in which their interference, thus invoked, has not been efficient to prevent the apprehended violation.

The justice of these views of the undersigned on the 17th of April, 1869, have been amply vindicated by subsequent events.

Instead of resorting to the exceptionable and uncertain measure of a proclamation, this Government availed itself of the agency of special and peremptory instructions to executive officers; and by this means succeeded in preventing the formation of military expeditions in every case referred to by Admiral Polo, except in the case of the Catharine Whiting, and in that case it entirely broke up the proposed expedition by the use of force.

The objectionable decree of the 24th of March was soon followed by a proclamation of Count Valmaseda still more abhorrent to the sense of the civilized world. By this proclamation, made at Bayamo on the 4th of April, 1869, which reached the Department of State on the 9th of May, the following announcement was made to Cubans who believed with Mr. Castelar, General Prim, Mr. Becerra, Mr. Silvela, Mr. Martos, Mr. Rivera, and other Spanish statesmen, that Cuba was suffering under oppression and wrong which ought to be remedied:

1st. Every man, from the age of fifteen years upward, found away from his habitation, (finca,) and does not prove a justified motive therefor, will be shot.

2d. Every habitation unoccupied will be burned by the troops.

3d. Every habitation from which does not float a white flag, as a signal that its occupants desire peace, will be reduced to ashes.

Women that are not living at their own homes, or at the house of their relatives, will collect in the town of Jiguani, or Bayamo, where maintenance will be provided. Those who do not present themselves will be conducted forcibly.

The courses of trade and of social intercourse had carried many citizens of the United States into Cuba. When, therefore, this proclamation reached the undersigned, the President thought it right toward Spain that, although scarcely crediting the genuineness of the document, the undersigned should send the following notice to Mr. Lopez Roberts:

In the interest of Christian civilization and common humanity, I hope that this document is a forgery. If it be indeed genuine, the President instructs me, in the most forcible manner, to protest against such a mode of warfare, and to ask you to request the Spanish authorities in Cuba to take such steps that no person having the right to claim the protection of the Government of the United States shall be sacrificed or injured in the conduct of hostilities upon this basis.

Admiral Polo now attempts to defend these orders by saying that—

Such rigorous measures are not confined exclusively to Spain; that the code of instruction for armies in the field published by the War Department of the United States

during the civil war which terminated in 1865 authorized the destruction of every kind of property belonging to the enemy, and the penalty of death on every one who, in a section of territory occupied or subjected by one of the Federal armies, attempted to resist said army or the authorities which it had established.

The United States were in a state of war when the orders referred to were issued. Spain had not been slow in forcing upon them in the very incipiency of the rebellion her recognition of a state of war. She does not now recognize that she is herself at war, but appeals, as a precedent for her conduct, to rules prescribed for armies in the field. If she claims the rights, it is but logical that she accept the consequences of a state of war.

The instructions for the government of armies of the United States in the field, referred to by Admiral Polo, were promulgated on the 24th of April, 1863. The undersigned takes the liberty of quoting several passages from them, which sufficiently illustrate the humane and Christian spirit which pervades them—a spirit characterized by Dr. Bluntschli as "en corrélation avec les idées actuelles de l'humanité et la manière de faire la guerre chez les peuples civilisés."

Martial law is simply military authority exercised in accordance with the laws and usages of war. Military oppression is not martial law; it is the abuse of the power which that law confers. As martial law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity, virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed.

Military necessity admits of all *direct* destruction of life or limb of *armed* enemies, and of other persons whose destruction is incidentally *unavoidable* in the armed contests of the war.

Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of the war will admit.

The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; strictly private property; the persons of the inhabitants, especially those of women, and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.

Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war, and indeed modern war itself, means to obtain that object of the belligerent which lies beyond the war. Unnecessary and revengeful destruction of life is unlawful.

The undersigned is confident that Admiral Polo will feel a sincere pleasure in thus knowing that his information respecting these instructions has been incorrect. Even had it been correct, the accomplished and generous minister from Spain and the undersigned would alike feel unwilling to contend that two wrongs could make a right.

Even in such case, however, it would be remembered that a worthy precedent might be found in the practice of the United States during a rebellion of the most mighty proportions, pending which not a prisoner was killed in cold blood; not a political crime, however grave, was visited with capital punishment. The soil of the United States remains to this day unstained by the first drop of blood taken from a political offender. Had this example been followed wherever a political insurrection has arisen, many might now be living whose blood cries aloud against the cruelty of some rulers. Christendom generally applauds the example of clemency and of generosity which the United States thus exhibited.

The same spirit of generous regard for life, and forgiveness, marks the policy of the United States in other respects, and makes their penal codes look to the prevention more than to the punishment of crime, and often withholds the *enforcement of penalties* when the danger against

which they are denounced is supposed to have passed. It is with much regret that it is seen from the correspondence with the representatives of Spain for the past five years, and from the frequent complaints (in the note of Admiral Polo, now acknowledged) of the omission of the United States to enforce penalties and inflict punishment, that Spain does not sympathize with the policy of clemency and forgiveness, and seems to regard punishment as the test of the sincerity with which crime is denounced, and as the sole means of preventing at least political offenses. The examples of the condition of the two countries must be the criterion to determine the comparative merits of the antagonist systems.

Prior to this time, (namely, on the 12th of February, 1869,) a decree with an explanatory statement had been issued by the captain-general, taking from the jurisdiction of the ordinary courts a large class of crimes, and forcing American citizens charged with such crimes to be tried before a court-martial, in violation of the provisions of the treaty of 1795. When it is remembered that this decree was issued about the time when it was officially announced to the undersigned that "the rebels have no communication with each other, they occupy no place as a center of operations, nor have they in the whole island a single city, a single town, a single village or hamlet, nor even a point on the coast where they might collect their forces, and date their orders and proclamations," Admiral Polo will comprehend the magnitude of this assault upon the rights secured to citizens of the United States by the treaty of 1795.

The English translation of the text of this decree is as follows:

In use of the extraordinary faculties with which the provisional government of the nation has invested me, I decree the following:

ARTICLE 1. Crimes of *infidencia* shall be tried by ordinary court-martial.

ART. 2. Prosecutions already commenced shall follow the legal process prescribed by the laws for the tribunals of justice.

ART. 3. All aggressions, by act or by word, against any of the delegates of the government, shall be considered as a crime against the authority, and will subject its author to trial by court-martial.

DOMINGO DULCE.

HAVANA, *February 12, 1869.*

SUPERIOR POLITICAL GOVERNMENT OF THE EVER-FAITHFUL ISLAND OF CUBA—OFFICE OF THE SECRETARY.

For the better understanding of the decree published yesterday, (the 12th of February,) it is made known that under the word *infidencia*, which is made use of in article 1, are understood the following crimes: treason, or *lesa nacion*, rebellion, insurrection, conspiracy, sedition, harboring of rebels and criminals, intelligence with the enemy, meetings of journeymen or laborers and leagues; expressions, cries, or voices subversive or seditious; propagation of alarming news; manifestations, allegations, and all that, with a political end, tends to disturb public tranquility and order, or that in any mode attacks the national integrity.

It is also made known that robbery in uninhabited districts, whatever may be the number of the robbers, and in populated districts, if the number of the robbers be more than three, shall be tried by court-martial, as also the bearers of prohibited arms. And by order of his excellency the superior political governor, the same is published in the Gazette, for the general knowledge.

On the 15th of April, 1869, the same policy which had prompted the authorities in Cuba to deprive citizens of the United States of personal rights guaranteed to them by treaty, led to a decree of embargoes of property, which, so far as it applied to the properties of citizens of the United States, was also in direct violation of the rights secured by the treaty of 1795. The publication of this decree was followed by the publication of another decree, (made on the 1st day of April,) interfering with the free alienation of property on the island. And two days later

another decree was published, creating an administrative council, to take charge of the embargoed estates. Under the operation of these several decrees a vast amount of the property of citizens of the United States is understood to have (illegally, and in violation of law and right) come into the possession of subjects of Spain, without having yet been accounted for or refunded.

When these decrees came to the knowledge of the undersigned, he addressed the following communication to the predecessor of Admiral Polo, under date of April 30, 1869:

I am instructed by the President to inform you that this Department has received from the United States consulate in Cuba a decree dated the first day of April current, and promulgated by the captain-general of the island on the 15th of this month, which virtually forbids the alienation of property in the island, except with the revision and assent of certain officials named in the decree, and which declares null and void all sales made without such revision and assent.

In view of the intimate commercial relations between Cuba and the United States, and of the great amount of American property constantly invested there in commercial ventures, as well as in a more permanent form, the President views with regret such sweeping interference with the rights of individuals to alienate or dispose of their property, and he hopes that steps may be speedily taken to modify this decree so that it shall not be applicable to the property of citizens of the United States, and thus prevent disputes and complaints that cannot fail to arise if its execution is attempted as to such property.

It is with regret that the undersigned finds himself unable to accept the declaration in Admiral Polo's note, made in connection with the seizure of private estates, and the transfers of private property, that it was not without waiting for manifestations of disloyal sentiments and purposes that the decrees were made respecting the sales and embargoes. The undersigned is of opinion that a recurrence to the correspondence which he has had the honor to conduct with the Spanish legation in this capital, and through the legation of this Government at Madrid, will recall many instances of interference with the private rights and property of citizens of the United States, who have had no connection with the insurrectionary movements in Cuba, and many where Spain has practically admitted the precipitancy of her officers in their haste to lay hands on private property, and has in many instances promised, and in a very few instances has granted, the restoration of property thus unlawfully seized. And in this connection the undersigned must be permitted to express the regret with which he observes the introduction into a diplomatic note of the cases of "eminent banking and commercial houses of New York and other places," which, by agreement between the two governments, have been referred for adjudication to an international commission, and the prejudgment and denunciation of these eminent houses as having "lent their names to a false pretext."

On the 7th of July, 1869, the captain-general of Cuba decreed:

ARTICLE 1. There shall continue closed to import and export trade, as well for vessels in foreign commerce as also those in the coasting trade, all the ports situated from Cayo Bahia de Cadiz to Punta Mayso, on the north, and from Punta Mayso to Cienfuegos, on the south, with the exception of those of Sagua la Grande, Caibarien, Nuevitas, Gibara, Baracoa, Guantanamo, Santiago de Cuba, Manzanillo, Santa Cruz, Zaza, Casilda, or Trinidad, and Cienfuegos, in which there are established custom-houses or collection-offices.

Those who attempt to enter the closed ports or to hold communication with the coast shall be pursued, and, on being apprehended, prosecuted as infractors of the laws.

ART. 2. In accordance with the same, there shall also be prosecuted vessels carrying powder, arms, or military supplies.

ART. 3. The transportation of individuals for the services of the insurrection is much more grave than that of contraband, and will be considered as an act decidedly hostile, being proceeded against in such case as an enemy, the vessel and its crew.

ART. 4. If the individuals to which the preceding article refers come armed, they

will afford proof in fact of their intentions, and will be tried as pirates the same as the crew of the vessel.

ART. 5. There shall also be held to be pirates, in conformity with law, vessels which may be seized bearing a flag not recognized, whether the same be armed or not as vessels of war.

ART. 6. On the high seas contiguous to those of this island the cruisers shall confine themselves to exercise over such vessels as may be denounced, or those that by their proceedings excite suspicion, the rights stipulated in the treaties signed by Spain with the United States in 1795, with Great Britain in 1835, and with other nations subsequently, and if in the exercise of these rights vessels should be found recognized as enemies of the integrity of the territory, they shall be brought into port for the corresponding legal investigation and trial.

This extraordinary decree caused a profound sensation in the United States, and the undersigned, as soon as it was received, addressed a note of inquiry to the predecessor of Admiral Polo, dated July 16, 1869, the material parts of which he takes the liberty of transcribing, as Admiral Polo seems to be under a misapprehension respecting it:

The decree of the captain-general, De Rodas, assumes powers and rights over the trade and commerce of other peoples inconsistent with a state of peace, and which the United States can be expected to allow their vessels to be subjected to only when Spain avows herself to be in a state of war, or shall be manifestly exercising the rights conceded only to belligerents in the time of war.

The first article of the decree proposes to close certain ports, embracing a large extent of the island of Cuba, against the peaceful commerce of foreign countries. Without contesting the right of a government in time of peace to exclude from its ports the trade and commerce of a friendly people, the undersigned assumes that the exercise of this power is to be understood purely as a municipal act, to be executed and enforced wholly within the recognized exclusive jurisdiction of Spain, and only as to ports which are in the possession of the Spanish authorities. In case the success of the insurrectionary party should put any of the ports, declared to be closed, in their possession, the United States, as a maritime nation, will regard an effective blockade to be necessary to the exclusion of their commerce.

The second article of the decree is vague in the absence of the limits within which it proposes to prohibit the carrying of powder, arms, or military supplies.

The transportation on the high seas, in time of peace, of articles commonly known as contraband of war, is a legitimate traffic and commerce which cannot be interfered with or denounced unless by a power at war with a third party in the admitted exercise of the recognized rights of a belligerent. The freedom of the ocean can nowhere and under no circumstances be yielded by the United States. The high seas contiguous to those of the island of Cuba are a direct pathway of a large part of the purely domestic trade of the United States. Their vessels trading between their ports in the Gulf of Mexico and those of the Atlantic coast pass necessarily through these waters. The greater part of the trade between the ports of the United States on the eastern side of the continent and those on the Pacific slope, of necessity pass in sight of the island of Cuba. The United States cannot, then, be indifferent or silent under a decree which, by the vagueness of its terms, may be construed to allow their vessels on the high seas, whatever may be their cargo, to be embarrassed or interfered with. If Spain be at war with Cuba, the United States will submit to those rights which public law concedes to belligerents. But while Spain disclaims a state of belligerency, or until the United States may find it necessary to recognize her as a belligerent, the Government of the United States cannot fail to look with solicitude upon a decree which, if enforced against any vessel of the United States on the high seas, cannot but be regarded as a violation of their rights that may lead to serious complications.

The sixth article of the decree refers to certain rights claimed to be stipulated by the treaty entered into between Spain and the United States in 1795.

The undersigned desires to call the attention of Mr. Roberts and of the government of Spain to the fact that the treaty of 1795 confers upon neither of the contracting parties any rights on the high seas over the vessels of the other in time of peace.

The articles of the treaty of 1795 from I to XI, inclusive, define and regulate the reciprocal relations and obligations of the parties without reference to either party being engaged in war. The portion of the treaty from the XIIth article to the XVIIIth contemplates exclusively their relations as neutrals, the duties and powers of each toward the other when one or the other may be engaged in war with a third party. The eighteenth section recognizes and regulates the right of visit or of approaching time of war, for the inspection of the passport and the identification of the nationality of a vessel of commerce by the vessels of war, or by any privateer of the nation which shall be at war. It confers no right; it limits and prescribes the manner of exercising a belligerent right when such may exist. The clear object and intent of this

provision of the treaty is the avoidance of discussion and annoyance, and the prevention of abuse or indiscretion in the exercise of a belligerent right. Its location in the treaty, the recognition of the right of a privateer (who has no existence except in war) as having the same power and right in the particular referred to with a national vessel of war, and the whole scope and aim of the XVIIIth article of the treaty, established beyond possibility of question that it refers only to the rights which one of the parties may have by reason of being in a state of war.

The treaty authorizes nothing but the inspection of the passport of the vessel of trade met with, while the sixth article of the decree of General De Rodas contemplates a search as to the character of the vessel beyond the limitation fixed by the treaty.

If Spain be engaged in the war, it is essential to the rights, as well as to the definition of the duties, of the people of the United States, that they be publicly and authoritatively advised thereof and admonished as to their obligations and liabilities in their new relation with a friendly power. And such admonition admits of no avoidable delay in view of the vast commerce that will thus be subjected to restriction, limitation, and possible detention.

The undersigned, therefore, respectfully desires to be informed by Mr. Roberts, at the earliest practicable moment, whether, in the issuance of this decree, it is to be understood by the United States that Spain recognizes that she is in a state of war and claims the rights of a belligerent.

The undersigned has the honor further to say to Mr. Roberts, that the Government of the United States cannot fail to regard the continuance of the decree referred to, or any exercise on the high seas near the island of Cuba, by any vessel of war or privateer of Spain, of the right to visit or board any vessel of the United States, under color of the provisions of the treaty of 1795, as involving the logical conclusion of a recognition by Spain of a state of war with Cuba.

Before concluding, the undersigned begs to call Mr. Roberts's attention to the very grave complication which might ensue from any interference with a vessel of the United States engaged in a lawful voyage, passing near the island of Cuba. The United States maintain the right of their flag to cover and protect their ships on the high seas.

In conclusion, the undersigned expresses the hope that Mr. Roberts will speedily be at liberty to announce the formal abrogation of a decree which causes so much serious apprehension to the Government of the United States, and against which this Government feels bound most earnestly to remonstrate.

In deference, as it was understood, to these views expressed by the undersigned on behalf of this Government, the decree of the captain-general was modified as follows on the 18th of July, 1869:

In view of the determinations adopted by the Government of the United States of America, as reported by his excellency the minister of Spain in Washington, under date of the 15th instant, and which were published in the Official Gazette of the following day, and in order, at the same time, to relieve legitimate commerce from all unnecessary interference, in use of the faculties which are conferred upon me by the supreme government of the nation, I have determined to modify my decree of the 7th instant, leaving the same reduced to the first five and essential articles.

In consequence of these severe measures against the persons and properties of Cubans who shared the opinions of the liberal statesmen of Spain respecting the injuries which had been inflicted upon their native country, many fled from the island to the United States. And the undersigned cannot disguise from himself that these Spanish subjects, driven from their native country, have attempted to abuse the hospitality of the United States—that they have tried to make use of their safety here in order to regain what they had lost in Cuba, and that they have been restrained only by the perpetual vigilance and zeal of the officers of the United States. Alas! if the ears of the ministers of Amadeo and of the republic could have been opened to the complaints of their Cuban friends, what criminations might have been spared us!

Admiral Polo, in his review of the vessels which, he says, have taken or attempted to take men and arms from the United States to Cuba, speaks particularly of the Mary Lowell, the Salvador, the Grapeshot, the Catherine Whiting, the Hornet, the Lillian, the Upton, and the Virginius. He also makes reference to the Florida, the Edgar Stuart, the Anna, the Fanny, and the Webster.

The imperfect and in many respects erroneous manner in which Admiral Polo has referred to the vessels which he has named, and his entire neglect to notice the many proofs of the constant vigilance and of the anxious desire of the United States to perform all their international duties to Spain, make it necessary for the undersigned to give a brief review of what was actually done by the United States in respect of these matters.

It may give precision to the review to first define succinctly what the United States understand to have been their duties toward Spain, as a neighbor and as a friend.

The repeated references by Admiral Polo to the doctrines laid down in the course of the discussion at Geneva induce the undersigned to say at the outset, not only that the particular references and citations are from the argument of counsel, which in forensic discussions among all nations is permitted to take a wider latitude of expression than is usual in official or judicial statements, which are supposed to express settled convictions; but also that these discussions at Geneva were predicated upon the admission of a recognized state of war; and that if Spain is prepared to concede that there is a state of war in Cuba, with belligerent rights in each party to the conflict, and shall accede to the three rules set forth in the treaty of Washington, then the United States may be prepared to concede to Spain what they claimed of Great Britain at Geneva, viz, that their duties as a neutral toward Spain as a belligerent will not thereafter be fully performed by simply acting upon information which may be furnished by Spanish agents, without themselves originating any action; that, in the language of their own countercase at Geneva, "they would not thereby be relieved from the duty of an independent, diligent, and vigilant watchfulness in order to prevent evil-disposed persons from violating their neutrality."

But the undersigned is also constrained to insist that the idea of neutrality in international discussions is inseparable from the idea of a belligerency to which the neutral is not a party; and to repeat that he is unable to comprehend how propositions for the regulation of the conduct of a neutral in a state of war can be pertinently applied to the conduct of one sovereign state toward another friendly sovereign state in time of peace. Thus when Peru, between whom and Spain a state of war existed, requested the United States to detain a large number of vessels of war, which certain contractors were constructing within the territories of the United States for Spain, it became the duty of the United States to detain the vessels; but, when the assent to their release was given by Peru, it was not regarded by Spain or by the United States as any violation of international duty to permit the vessels to be constructed and delivered and dispatched, notwithstanding the existence of an armed insurrection against Spain in Cuba. Nor can it be claimed that the United States have been guilty of any neglect or want of duty in allowing Spain, on more than one occasion, to make use of their public dock-yards for the reparation of vessels of war.

So far as relates to the past, Spain has never been willing to concede that a state of war exists in Cuba. The rights and duties of the United States toward Spain, therefore, from the commencement of the insurrection, are to be measured by the rights and duties of one nation toward another, in case an insurrection exists which does not rise to the dignity of recognized war.

What one power in such case may not knowingly permit to be done toward another power, without violating its international duties, is de-

fined with sufficient accuracy in the statute of 1818, known as the neutrality law of the United States.

It may not consent to the enlistment within its territorial jurisdiction of naval and military forces intended for the service of the insurrection.

It may not knowingly permit the fitting out and arming or the increasing or augmenting the force of any ship or vessel within its territorial jurisdiction, with intent that such ship or vessel shall be employed in the service of the insurrection.

It may not knowingly permit the setting on foot of military expeditions or enterprises to be carried on from its territory against the power with which the insurrection is contending.

The learned and accomplished minister of Spain, toward the close of his able discussion of this subject, cites the authority of Lord Palmerston to establish that a sovereign power "should not permit its territory to be made use of as a place of shelter, from which communication should be carried on for the purpose of disturbing the tranquillity of the neighboring states."

These duties of good neighborhood were recognized by this Government more than a quarter of a century before Lord Palmerston made the speech referred to by Admiral Polo; and the neutrality law of 1818 was then enacted for the purpose of defining the acts of disturbance which should be prevented, and of providing a punishment for such persons as might be found to be guilty of them.

But a friendly government violates no duty of good neighborhood in allowing the free sale of arms and munitions of war to all persons, to insurgents as well as to the regularly constituted authorities; and such arms and munitions, by whichever party purchased, may be carried in its vessels on the high seas, without liability to question by any other party. In like manner its vessels may freely carry unarmed passengers, even though known to be insurgents, without thereby rendering the government which permits it liable to a charge of violating its international duties. But if such passengers, on the contrary, should be armed and proceed to the scene of the insurrection as an organized body, which might be capable of levying war, they constitute a hostile expedition which may not be knowingly permitted, without a violation of international obligation.

During the late Franco-German war, each party was free to purchase arms and munitions of war in this country, and did so, and Frenchmen whose hearts were with their struggling countrymen at home, or Germans who wished to join the invading armies of Germany, were free to leave the shores of the United States for that purpose, so long as they left as private citizens, unarmed, and without engagement made in this country to enter the service of a belligerent. They did thus leave, in vessels of several different nationalities. Neither this Government nor any other neutral government which may have allowed its merchant-marine to transport the arms and munitions of war or the passengers to Europe, was guilty of a violation of its duties as a neutral.

Even recognized war, therefore, cannot oblige neutral nations to contract the right of their citizens to engage in such commerce, which is lawful in time of peace, or to abridge the liberties of persons enjoying the protection of their flag, to such a point as to render illegal either of these proceedings; although in time of actual war the transportation on the high seas of articles known as contraband of war is to be made subject to the right of capture. But in time of peace no vessel of war has the

right to capture, or even to interfere with, molest, or detain upon the high seas a regularly documented vessel of another power.

This doctrine is not new in the intercourse of nations.

On the 10th day of April, 1858, Mr. Cass, then Secretary of State of the United States, wrote to Lord Napier, the envoy of Great Britain:

Undoubtedly a right vested in the armed cruisers of one state to stop and examine the merchant-vessels of another might be so exercised as to contribute toward the suppression of crimes upon the ocean. But this power of armed intervention might also be exerted at the expense of the maritime rights of the world. Such an exercise of force, so liable to be abused, will never meet the concurrence of the United States, whose history abounds with admonitions, warning them against its injuries and dangers. They have no disposition to surrender the police of the ocean to any other power, and they will never falter in their determination to enforce their own laws in their own vessels, and by their own power, and to oppose the pretensions of every other nation to board them by force in times of peace. * * * To permit a foreign officer to board the vessel of another power, to assume command in her, to call for and examine her papers, to pass judgment upon her character, to decide the broad inquiry whether she is navigated according to law, and to send her in at pleasure for trial, cannot be submitted to by any independent nation without injury and dishonor. The United States deny the right of the cruisers of any other power whatever, for any purpose whatever, to enter their vessels by force in time of peace. No such right is recognized by the law of nations. As Lord Stowell truly said, "I can find no authority that gives the right of interruption to the navigation of states upon the high seas, except that which the right of war gives to belligerents against neutrals. No nation can exercise a right of visitation and search upon the common and unappropriated parts of the ocean, except upon the belligerent claim."

On the 8th of June, 1858, Mr. Dallas, the minister of the United States in London, had an interview with Lord Malmesbury, at the foreign office, on the subject of the detention and visitation of documented vessels of the United States by British cruisers on the high seas. Lord Malmesbury furnished Mr. Dallas with a written minute of the conversation which then took place:

Her Majesty's government are not prepared to justify or excuse such acts on the part of their officers as have been complained of by the United States Government, if they are truly reported. Her Majesty's government recognize the principles of international law, as laid down by General Cass in his note of the 10th of April, and that nothing of the treaty of 1842 supersedes that law. Her Majesty's government, however, think it most indispensable in the interest of civilization and the police of the seas that there should be a power of verifying the nationality of a vessel suspected, on good grounds, of carrying false colors. Her Majesty's government would wish to learn from the United States Government their views in detail on this point, in the hope that some mutual arrangement, by way of proceedings, to be executed by our respective officers, may be found effective without being offensive. The French have lately proposed and laid down this one, viz: that a boat may be sent alongside of a suspected ship, and may ask for papers, but not, unless invited, board the vessel. Such is our arrangement with France. Lord Malmesbury has given Mr. Dallas a copy of our instructions to our officers. Pending our negotiation on the above point, orders will be given to discontinue search of United States vessels.

On the 16th of the same June, the Senate of the United States unanimously adopted a resolution—

That American vessels on the high seas, in time of peace, bearing the American flag, remain under the jurisdiction of the country to which they belong, and, therefore, any visitation, molestation, or detention of such vessel, by force, or by the exhibition of force, on the part of a foreign power, is in derogation of the sovereignty of the United States.

It is also understood that the enlightened government of Spain has, in the recent case of the Deerhound, recognized the justice and force of the principle thus established in practice by France, Great Britain, and the United States.

That vessel was dispatched from Plymouth, (England,) with a cargo of arms, ammunition, and military clothing, destined for the Carlist insurgents in the north of Spain. She was captured by a Spanish

cruiser on the high seas off the coast of Spain and taken into port. Lord Granville demanded her release, saying—

Her Majesty's government cannot acquiesce in the competency of the Spanish government to refer to a prize-court the case of the Deerhound; neither can Her Majesty's government admit that legal jurisdiction can be assumed by the Spanish government over a British ship which, in time of peace, has been seized upon the high seas by a public ship of Spain.

The government of Spain surrendered the Deerhound, and Mr. Carvajal informed the representative of Great Britain—

That if her release was agreed upon, it was only because of her having been captured in neutral waters.

The learned minister of Spain seeks to maintain, by a citation from an eminent English publicist, that this right of transportation may be subordinated by the necessities of self-preservation in the government which is contending with an insurrection. It is not necessary for the undersigned to assent to or to deny the justice of this proposition in the extreme case and with the great limitations stated by Sir R. Phillimore. But the acute intelligence of Admiral Polo cannot fail to perceive that the supposed act of self-preservation is none the less an act of war because alleged to be done in self-defense; and the undersigned cannot permit himself to assume that Spain maintains that such an invasion of the territory of another power as Phillimore refers to would confer upon the courts or military authorities of the invading nation the right to try and condemn, for alleged crimes, persons who might be captured on neutral soil. In the case of the Virginius, had Spain, after her capture by the Tornado, restored her and her passengers and crew to the United States, to be dealt with according to their laws, the appropriateness of the citation from the British publicist would appear to be more manifest.

Admiral Polo also cites an extract from a speech by Lord Lyndhurst, in the House of Lords, in March, 1853, in which the learned jurist endeavored to convince that distinguished body that, by the laws of England—

If a number of British subjects were to combine and to conspire together to excite revolt among the inhabitants of a friendly state, and those persons, in pursuance of that conspiracy, were to issue manifestoes and proclamations for the purpose of carrying that object into effect; above all, if they were to subscribe money for the purpose of purchasing arms to give effect to that intended enterprise, such persons would be guilty of a misdemeanor, and liable to suffer punishment, and that foreigners residing in England are punishable by the common law, precisely in the same manner, and to the same extent, and under the same conditions as natural-born subjects.

In view of events which have taken place since that speech was delivered, the undersigned might, were it necessary, feel disposed to doubt whether Lord Lyndhurst correctly interpreted English law, as understood by its administrators. But it is needless to dwell upon that consideration, because, as the undersigned has already pointed out, the United States have not left the character of that class of acts to be determined by unwritten common law, but have provided by statute which of them, if committed, should be regarded as criminal, and punished accordingly.

In the same connection Admiral Polo refers to a decision of a British court respecting the law of libel. It is not understood what precise bearing upon the present discussion this reference is intended to have. If it be intended to suggest the propriety or the expediency of limiting the freedom of public discussion in the United States upon the Cuban insurrection, the reply must be courteous but peremptory and distinct, that the suggestion cannot be entertained. This Government tolerates the greatest freedom and latitude of discussion of public subjects. It

even permits, without objection, a journal in New York, which is currently reported to receive pecuniary support from official Spanish sources, to indulge in language vulgarly abusive and libelous toward the President of the United States and the undersigned, and calculated to excite disrespect toward the Government, and to destroy confidence in the institutions of the country.

The amiable and just minister of Spain will not ask a government, which permits such freedom in a foreigner, to restrain its own citizens within narrower limits. And it will probably occur to him that a comparison of the tone, temper, and modes of expression of the journals of this country (where no censorship prevails) toward Spain, with those of the journals of Madrid and of Havana (where it is understood that the government assumes the responsibility of controlling what shall appear) toward the United States, will show that the American press is quite as temperate, wise, moderate, and just as is the Spanish.

The undersigned will now proceed to show that the United States have faithfully performed all their international duties toward Spain during the existing insurrection.

The earliest case to which Admiral Polo invites attention is that of the Mary Lowell. It is not alleged, as it certainly could not be correctly said, that this Government had any knowledge or information of the sailing of this vessel, so that it is unnecessary for the undersigned in this connection to consider whether the voyage upon which she was engaged was or was not one which should have been prevented by this Government. And further, the Mary Lowell never reached Cuba except as a vessel captured by a Spanish man-of-war, and did no injury to Spain. The undersigned would be at a loss to understand why reference is made to her, were it not that Admiral Polo makes reference to the fact that a claim against Spain growing out of an illegal seizure of this vessel is now pending before a judicial tribunal in Washington, and attempts to prejudge the case. The United States having agreed to submit that question to arbitration, the undersigned declines to enter upon a diplomatic discussion of it.

The case of the Salvador comes next in point of time.

On the 19th of March, 1869, the esteemed predecessor of Admiral Polo handed to the Secretary of State an unsigned and undated memorandum, in the following terms:

From official information deserving entire credence, it is known that at the port of Jacksonville or Fernandina, on the coast of Florida, a steamer is being fitted out by the name of Salvador, (or perhaps some other name,) for the purpose of committing depredations, in the character of a privateer and with the flag of the Cuban insurgents, against the maritime commerce of Spain. The vessel will leave port with the United States flag, and at sea will replace it by that of said insurgents. Considering that this steamer, under the absurd pretense of sympathizing with the Cuban insurgents, has no other object than that of committing acts of piracy against Spanish commerce, it is earnestly hoped that the United States Government will use all the means it may deem necessary to avoid a proceeding so scandalous and so contrary to the law of nations.

The Government of the United States responded to this suggestion by giving immediate orders to its officials to prevent such a violation of law.

On the 22d of March Admiral Porter, acting for the Secretary of the Navy, advised the undersigned that proper instructions had been given to the commander of the North Atlantic squadron on this subject. On the 23d the Attorney-General advised the undersigned that such instructions had been given to the officers of the Government under his Department as it was hoped would lead to the prevention or punishment of such violations of law. And on the 5th of April the Secretary of

the Treasury informed the undersigned that the collectors of Fernandina and of Jacksonville had reported that no such vessel was fitting out at those ports. In fact, no act of piracy was effected or attempted upon the commerce of Spain by the Salvador, or, so far as the undersigned knows, by any other vessel. And when, nearly two years later, Mr. Lopez Roberts, in an elaborate note, which will be noticed hereafter, summed up the charges which Spain thought herself justified in bringing against the United States by reason of alleged Cuban expeditions from United States ports, nothing was said of the Salvador; and from the day when Mr. Lopez Roberts asked the interference of this Government to prevent a piratical expedition in that vessel, to the day of the receipt of Admiral Polo's note of the 2d of February, not one word of complaint was made to the undersigned respecting this vessel.

Admiral Polo now says:

Accordingly said steamer sailed from Key West at the beginning of the month of May following, without being obstructed in any manner, carrying on board 150 recruits and 2,500 cases of arms, which she landed on the 14th of the same month on a point of the island of Cuba called Neuvas Grandes, according to the testimony of one William C. Pincher or Tinker, put in the hands of the Secretary of State on the 18th day of December, 1869, among several other documents, on which is founded a request for a recognition of belligerency in favor of the insurrection inaugurated by Cespedes.

It is presumed that the testimony thus referred to by Admiral Polo is that printed in the Senate Executive Document No. 7, at the second session of the Forty-first Congress, on the 110th, 111th, 112th, 113th, and 114th pages, under the name of William C. Tinker. A reference to this testimony shows that the affiant made only the following statement respecting the Salvador:

On the 14th of May last I landed at Nuevas Grandes from the steamer Salvador, together with 150 men.

He says nothing about sailing from Key West—nothing about cases of arms. In point of fact, the undersigned was informed by the United States consul-general at Havana at that time that the Salvador was an English steamer, and that she made the voyage in question from the English port of Nassau, and not from Key West.

As Admiral Polo has deemed Mr. Tinker of sufficient credibility to be made a witness on behalf of Spain, the undersigned has examined his affidavit with care, and finds that it contains several important statements, a few of which are transcribed:

Upon landing I took eight men and went forward into the country. I had proceeded about twelve miles, when I came to the first encampment of Cuban troops at San Martin. There were about eighty men there, under command of a captain; they were armed and uniformed; those men were placed there as a *posse comitatus*, or guard to the civil court, which was then in session at that place.

I found the government completely organized, the various officers performing the duties and functions belonging to their offices. There were the departments of war, of finances, of the interior, and department of public instruction. The congress was then in session. I attended several of its deliberations.

I found the people exceedingly enthusiastic, apparently everywhere devoted to the government of the republic.

During the time I was in the island, I visited a considerable number of the encampments of the republican army, situated between Puerto Principe and Santiago de Cuba. I found in the district I visited about twelve thousand men under arms.

There are certain lines of defense which had been assumed before I arrived, and which were maintained up to the time of my leaving, and which, from late reports, I know to be still held. These lines were, from Nuevitas on the north to Puerto Principe, a distance of about eighty-five miles, and from Puerto Principe to Santa Cruz on the south. * * * Roads leading to the "five-city" district.

The undersigned is constrained to find in these statements of a witness now brought forward by the Spanish minister an apparent conflict with other information furnished to Admiral Polo, and cited by him, that "the insurrectionary uprising which took place at Yara in 1868 did

not find extensive sympathies in the island of Cuba," and that these causes "reduced the insurgents in the eastern extremity of the island to the condition of wandering bands, destitute of arms and munitions of war."

On the same day, with the memorandum respecting the Salvador, Mr. Lopez Roberts left at this Department another memorandum, also unsigned and undated, which was of the following tenor:

According to information received from New Orleans, Mobile, Jacksonville, Fla., Charleston, Savannah, and other southern ports, filibustering expeditions are being organized in said ports for the purpose of joining the insurgents in the island of Cuba.

It is hoped that the Government of the United States will renew the orders previously issued to the local authorities, (district attorneys, collectors of customs, United States marshals,) to the effect that, acting in harmony with the consuls of Spain or other duly-authorized agents, such measures may be taken, agreeably to law, as shall prevent and defeat such acts of aggression against a nation friendly to the United States and their ancient ally.

This information also was at once brought to the notice of the Attorney-General, the Secretary of the Treasury, and the Secretary of the Navy.

The admiral in command of the North Atlantic squadron at the earliest moment dispatched a vessel to New Orleans. The officer in command of that vessel reported that he was unable to discover that there was even a probability of any such expedition being seriously contemplated, although its organization had doubtless been discussed, and perhaps proposed. The information from the other Departments was of the same tenor.

The next case chronologically to which attention is invited by the note of the 2d of February is that of the Grapeshot, which is said to have sailed from New York with arms and passengers for Cuba in April, 1869, soon after the attention of the authorities of the United States had been specially directed by the minister of Spain, away from New York to New Orleans, Fernandina, Mobile, Jacksonville, and other more southern ports, as the contemplated points for Cuban expeditions. Neither this Government nor the alert agents of Spain apparently had reason to suspect that the Grapeshot was about to make a voyage inconsistent with the international duties of this country to Spain; and that there was nothing in her voyage, so far as known to this Government, inconsistent with such duties, may be inferred from the fact that no special complaint has been made to this Government by the representative of Spain in respect of it until now. Her purposes were disclosed to the British authorities at Turk's Island during her stay there on her way to Cuba, and they, apparently, did not regard it as a case where they would be authorized to interfere. One aspect of the case only suggests a possible reason for its presentation now: that the claims of the representatives of Messrs. Speakman and Wyeth, who were passengers on the vessel, and were executed by the authorities of Spain, as was charged by the United States in violation of law, have been agreed to be referred to a judicial tribunal in Washington. The undersigned most respectfully declines to discuss these cases diplomatically, notwithstanding Admiral Polo's statement that he has "no doubt" as to the facts respecting these unfortunate men.

The next case to which Admiral Polo invites attention is that of the steamer Perrit. Admiral Polo says:

In three weeks after the said reply of the Secretary of State, [meaning the note to Mr. Lopez Roberts, of the 17th of April,] the steamer Perrit, the property of Messrs. Spofford, Tileston & Co., of New York, was falsely cleared at the custom-house of that city for Kingston, in the island of Jamaica, with a large cargo and three hundred military men, under the orders of the same Thomas Jordan who was one of the officers *of the expedition of* the Mary Lowell.

It may be assumed that there is no pretense that the custom-house knew that the clearance was a fraud, since Admiral Polo says nothing on that point, but is, nevertheless, at pains to allude to a newspaper rumor that some detectives in New York knew what was going on, and asserts that this rumor has never been denied. This Government had no means of knowledge of the movements of the Perrit beyond that which it might derive from the records of its custom-house. The undersigned will not do the amiable and intelligent minister of Spain the injustice to suppose that in his remarks about the newspaper rumor he considered it of any serious importance whether the affirmations in an obscure paragraph in a newspaper were or were not officially denied by this Government.

It is now known that no armed or organized expedition went on the Perrit; that it consisted only of unarmed passengers, mostly Cubans, returning home—about two hundred in all.

The attention and vigilance of this Government were directed on that day by the minister of Spain in quite another direction. Three weeks from the 17th of April would be the 8th of May. But, late in business hours on the 7th of May, Mr. Lopez Roberts informed the undersigned that he had intelligence to the effect that the steamer Quaker City was being fitted out and armed at New York for the purpose of cruising against Spanish commerce. The undersigned telegraphed immediately to the marshal of the United States, at New York, to inquire into the matter with a view to further proceedings, and as soon as possible the next morning he laid the matter officially before his colleagues, the Secretary of the Treasury and the Attorney-General. Each of those officers took prompt action, and the result was that the Quaker City was detained until, some weeks later, this Government was officially notified by the British minister at Washington that she had been transferred to a British subject and was laden with flour and bound to Jamaica.

There is no doubt that both the representatives of Spain at Washington and this Government had reason to think at that time that vigilance was necessary to counteract the activity of the friends of the insurrection. The steps already recounted show that. The information respecting the Quaker City came on the 7th of May, and she was immediately put under watch. On the 13th the undersigned submitted to the Attorney-General the expediency of instructing the judicial officers in regard to the steamer Atlanta, at Philadelphia, the steamers Memphis and Santiago de Cuba, at New York, and the steamer Florida, at Chester, and the same instructions were sent respecting them that had been sent in respect of the Quaker City. Although it turned out in the end that none of these vessels were intended for the insurgents, a constant watch was kept on them until this fact was established.

At the same time the minister of Spain was informed that the United States attorneys of the several districts would receive directly from the Spanish consuls any facts they might be pleased to communicate respecting any violation of the neutrality laws of the United States, and was told that if proof should be furnished, judicial proceedings would be at once set on foot for the purpose of preventing or punishing such violations.

About this time, also, proceedings were commenced in the courts in the city of New York against several leading Cubans, supposed to be concerned in these attempts to violate the sovereignty of the United States. The parties were arrested and released upon giving security that they would respect the laws.

Admiral Polo is pleased to say, in respect of the proceedings against these persons, that—

Only the district attorney at New York or the Attorney-General at Washington could have compelled the trial and punishment of these malefactors, but up to this day nothing of this kind has been attempted. Ryan escaped by force from the officer who had him in custody; but, although he was arrested at a subsequent period, never was he punished for any of his offenses until he was captured by the Virginius.

The undersigned takes the liberty to remind Admiral Polo of certain circumstances connected with the trial of Ryan and Jordan, with which he was probably unacquainted when he wrote his note of the 2d of February.

On the 27th of November, 1871, the district attorney of the United States for the southern district of New York addressed a letter to the counsel for the Spanish government in New York, in which he informed them that the United States circuit court would resume its session on the 6th of December following, and that it was his intention to call for trial at that session the indictment against General Jordan, and also to move the trial of William A. C. Ryan, adding:

You will recollect there are three indictments against Ryan, two for breaking the neutrality laws and one for escape and rescue from the marshal. I desire you to aid in procuring the witnesses for the Government, and to furnish all the assistance that you deem expedient.

When the circuit court convened, the district attorney found himself without the witnesses which the counsel for Spain had, on the 29th of November previous, given assurance would be present, and, under these circumstances, he was forced to have the several cases set down for hearing at a later day of the term. Accordingly, Jordan's, the first case, was fixed for trial on the 11th of that month. The district attorney then caused the following letter, on the 6th of December, to be addressed to the counsel of the Spanish government in relation to the witnesses, and the importance of securing their attendence, in order to enable him to proceed with the trial of Jordan:

I have to state that, in pursuance of your letter of the 22d of November, giving names of witnesses to be used in the prosecution of Thomas Jordan, subpœnas were made out for the persons named, and on the 1st instant delivered to the United States marshal for service, addressed respectively to the places given in your letter as the residence of such witnesses. F. A. Redburn, named in your letter as one of the witnesses, called at my office, and professed his willingness to accompany the duputy charged with the duty of serving the subpœnas, and I introduced him at the marshal's office, where he promised to accompany the officer. I learn that he did not return to go with the marshal, as he had agreed, but in his place a person named Frederick R. Lowe appeared, and expressed his intention of replacing Redburn. On the 2d instant, he wrote to the deputy, Mr. Tierny, in charge of the process, and agreed to meet him on Sunday night at Jersey City, and accompany him on his search for the witnesses. This appointment he failed to keep, and the marshal was obliged to proceed alone. He reports to me that he visited Port Tobacco, Md., given as the address of the witness Boyd; that he could find no person of the name in or about the place, which is a small village; that he inquired concerning Boyd from many of the inhabitants, and from the mail-carrier, who all assured him that no person of that name lived in the vicinity or had lived there for several years past. In Baltimore, in spite of diligent search, he could not find any George Bush who answered to the description of the person he was directed to secure. He further stated that the address must have been incorrectly given in your letter, as Franklin street is at a considerable distance from Druid Hill Park.

He then went to Paterson to secure Henry Raymond, that town being given as his residence, and having been told by Love that Raymond was employed in the machine-shop of McGurniss & Co., in that place. There is no such shop in Paterson. Inquiry that he made at other machine-shops and among machinists and workmen in the place failed to secure for him the person he sought.

Deputy Allen was sent to Lime Rock in search of George A. Mason, but returned *equally unsuccessful*. The only witnesses I have yet seen of the list furnished by you

are Lowe and Redburn. Lowe stated to me that he could procure Cameron, but has not yet done so. It will be impossible to do anything in the case of Jordan without the testimony of these witnesses, who cannot be found by any means at our disposal, and the case being set down for the 11th instant they should at once be procured.

On the next day, December 7, the district attorney again wrote to the counsel, expressing his willingness on behalf of the United States to pay the expenses of any person who might be designated by these gentlemen to accompany the officer charged with the service of the subpœnas. In this letter he says:

Subpœnas for such witnesses are now ready, and an officer will be kept prepared to start as soon as the person you may send, who will be able to designate to him the parties to be served, shall appear. I particularly request that you will send the person referred to without delay, as the cause is on the calendar for the 11th instant.

And again on the same day, December 7, still another letter was sent to the counsel informing them that in the indictments against Ryan he had caused subpœnas to be issued for the witnesses whose names they had furnished, adding:

I specially request that you will at once, in accordance with your offer, co-operate with the Government in obtaining the presence of those witnesses. I will make a further effort, by sending the marshal again with the subpœnas to each of the places named by you, and will pay the expenses of any person whom you or the Spanish consul will send to accompany the marshal, to point out to him the persons wanted as witnesses, and I repeat the request that my assistant has already made to you, that such person be promptly furnished.

The case (of Jordan) has been noticed for trial at each successive term, and your Mr. Craig has been advised of that fact, and requested to produce the witnesses, both by myself in person and by both my assistants, without any compliance or attempt to comply with the request. At each term Jordan has appeared, and his counsel has persisted on the case being tried, of which fact you have been repeatedly advised, and the Government, through the neglect on your part to carry out the assurance given when the indictment was formed, by producing the necessary witnesses or furnishing any information where they might be found, has been compelled to ask for continuance after continuance.

On the libel of the Florida you furnished me with affidavits fully justifying the seizure of that vessel, and, if true, her condemnation; but when the claimants compelled the trial, not one of the affidavits was produced by you, although repeatedly urged to furnish them; nor could one of the witnesses be found on the subpœnas issued by this office. Mr. Craig acted as counsel on that trial, and yet his vigilance was insufficient to aid us in finding the witnesses on whose affidavits, prepared by himself, the libel was issued.

On the 8th of December, in another letter to the counsel, the district attorney said:

I ask you explicitly, whether or not you intend to furnish a person, Mr. Redburn, or any one else, to accompany the marshal, and point out the witnesses for whom he is armed with process. * * * * * *

Mr. Redburn has seen the marshal, and been assured that his expenses will be paid; he has arranged with the marshal to meet him at Taylor's Hotel, in Jersey City, this evening at 8.30, to take the 9.20 train; the marshal will be there ready to go, if Mr. Redburn keeps his engagement; I request you to see that he keeps it. The Government is using every effort to find the witnesses required by you, and has gone beyond the usual course in assenting to your proposition to pay the expenses of the person you promise to furnish to point them out.

Notwithstanding these unwearied efforts on the part of the district attorney, Mr. Redburn did not keep his appointment, nor did any one else appear in his place to accompany the marshal. The witnesses were not forthcoming on the 11th, the day set for the trial of Jordan, and the Government was again obliged to apply for a continuance.

In the face of these repeated disappointments, the district attorney again, on the 28th of December, addressed a letter to the counsel of Spain, informing them that the circuit court would resume its session

on the 2d of January, 1872, and that he then intended to press the cases "of Jordan and Ryan to trial," adding:

I respectfully renew my request that as counsel for the Spanish authorities you furnish me with the witnesses material to establish the alleged violation of the neutrality laws, in accordance with the assurances given to me when the prosecution against Jordan was commenced.

It cannot be contended, in face of these efforts on the part of the prosecuting officers of the United States, that the failure to bring Jordan and Ryan to trial was the result of any want of earnestness or of zeal on the part of the United States or of its officers. The witnesses on whom Spain relied in her allegations and in her charges were diligently sought, with great pains and at great expense, by the officers of this Government, without receiving any aid from Spanish agents in the search. If they existed they could not be found. Consequently, the Government being unable to adduce evidence upon which a conviction could be asked, the prosecution had to be abandoned. The responsibility thereof rests elsewhere than with this Government or its officers.

In an early stage of these proceedings the President, as will be shown, had put into exercise the extreme executive power of the Government to stop vessels without the intervention of judicial process; and the various departments of the Government exerted their respective functions through the wide extent of country, and in almost every port of its seaboard, either upon its own suspicion of improper movements or upon suggestions received through the Spanish minister, whose consuls, by the incessant employment of detectives, were frequently furnishing complaints, which were examined; and, as is apt to be the case with information thus obtained, and which is generally procured from persons of most questionable character, and who, for a consideration, make statements which they either know to be false or of which they have but little knowledge, they often found themselves set upon investigations which could result in no useful ends.

The information given to the consuls through the detectives often proved entirely unfounded, and seemed to have been designed, first, to obtain money; and, second, to keep the Spanish representatives in this country in a state of excitement, and to divert their attention, and thus to embarrass and annoy both governments.

The witnesses whose *ex parte* affidavits furnished ground for the allegations of the Spanish consuls, were either wanting when it became necessary to establish those allegations in a court of law, or, if present, failed on the cross-examination to maintain their stories.

The characteristics of vagueness, indefiniteness, and absolute uncertainty have marked all the information furnished or proposed to be furnished by Spanish agents, attorneys, or counsel, since the outbreak of the insurrection, as a foundation for proceedings at law against the parties complained of.

But this Government, nevertheless, carefully examined all the evidence that came within its reach, with an anxious desire to miss nothing which might help it perform the full measure of its friendly duty toward Spain. For many months it was under the constant and severe strain of the effort to maintain its obligations as a friendly power.

In order to consider the complaints of Admiral Polo respecting the proceedings against Jordan and Ryan, the undersigned has been obliged to depart from the chronological history of the acts done by the United States in the performance of their duties toward Spain. To return. On the 17th of June, 1869, the Spanish minister at Washington informed the undersigned that he had positive and certain information of the or-

ganization in the city of New York of a military expedition, which was to embark from that port to the island of Cuba; that the expedition consisted of a large number of individuals who had been recruited and enlisted as soldiers by the agents of the Cuban insurrection; and that they were to take their departure within one or two days.

The Attorney-General was immediately informed of this, and the district attorney for New York was instructed on the subject. He replied by telegraph that action had already been taken by him. The officers of this Government, it therefore seems, had already acted in this important matter before the undersigned received the news from Mr. Lopez Roberts. As the result of their action most of the persons who were proposing to take part in the expedition were captured, and the expedition, which was to have gone out in the Catharine Whiting, was entirely broken up. The Catharine Whiting and the three tugs McCool, John Chase, and Maybe, and the schooners Fancy and Winona, laden with arms at Milford, Conn., were captured; and vessels were simultaneously sent to Newport, to the mouth of the Delaware, and to the entrance to Chesapeake Bay, a coast-line of several hundred miles, to intercept any who might have escaped, and who might still be bent upon pursuing the expedition.

On the 13th of July, 1869, Mr. Lopez Roberts informed the undersigned by note that he had heard of a number of persons enlisted for a military expedition to Cuba, who were quartered on Gardiner's Island, near New York, where they were detained against their will by officers of the expedition, and asked that the prompt orders required by the urgency of the occasion might be issued to prevent the departure of the expedition.

On the same day the President empowered the district attorney and the marshal at New York each with the extraordinary powers authorized by the eighth section of the neutrality act of 1818; and identical instructions were issued to each of them, from which the undersigned takes the liberty of making the following extracts:

Orders have been directed to the commandant of the navy-yard at Brooklyn to place at your disposal such of the naval forces of the United States as you may require, for the purpose of preventing the carrying on of the military expedition referred to in the note of Mr. Roberts, or any other expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign power or state, or of any colony, district, or people with whom the United States are at peace, and more especially against the territories or dominions of Spain or against the island of Cuba.

The President desires and directs that you capture all persons engaged in any and every such unlawful enterprise as above referred to; that the leaders and principal instigators to be held to be dealt with according to law.

Believing that many thoughtless and inconsiderate persons may have been misguided, deceived, and led into improper and unlawful engagements, under a sympathy for a people struggling for emancipation from oppressive rule, and for self-government and more liberal institutions, without due consideration of the unlawfulness of their conduct, and under the temptation of promises held out to them, he authorizes and directs the district attorney of the southern district of New York to release and discharge such of the privates or persons in inferior position or command in any such expedition or enterprise as he shall think may be discharged, with due reference had to the requirements of law and to the future enforcement of the laws and the maintenance of the peace and good order of the country, on such recognizance or security, or on such terms and conditions in each case, as to him shall seem expedient. But he directs that no person engaged in any such expedition or enterprise, who has been already taken in any recent similar unlawful expedition or enterprise, or who has been indicted for any violation of the neutrality laws or other laws of the United States, or who has given bail to keep the peace, &c., shall be discharged under this discretionary power given to the district attorney.

The district attorney is directed to make early investigation in order to the execution of this discretionary power, and for the purpose of bringing to punishment those

who are leaders and principals in any such unlawful expedition or enterprise, or who shall be the second time arrested or have violated their engagement to maintain the peace.

If you find that the naval forces thus placed at your disposal be not sufficient, or that any part of the land forces of the United States be necessary for the proper execution of the law, you will immediately advise me.

On the 16th of August, 1869, it being suggested that preparations were making for hostile expeditions against Spain, in aid of the insurgents in Cuba, on or near Saint Croix River, and particularly at Eastport and Calais, the district attorney for that district was instructed to use the utmost diligence in inquiring into the subject, and, if he found evidence sufficient to warrant it, to take all steps necessary in order to prevent violations of law, and to punish offenders.

On the same day the Hornet was detained at Philadelphia, under an order issued on the 13th of August. She was arrested, entirely on the motion of this Government, after she had actually begun her voyage with a clearance for Halifax. She was detained some time without anything appearing against her. She was then released, and she made her voyage according to her clearance. Returning thence, after having been fitted out in an English port, she is said by Admiral Polo to have taken on board men and coal off the coast of Massachusetts. She then put into Wilmington, in North Carolina, where she was libeled for a violation of the laws of the United States, and was condemned, and the hostile expedition against Spain, which it was in contemplation to make in her, was broken up.

The Hornet was detained at Wilmington until June, 1870, when she was released on bond. She came to New York, and was libeled again on the complaint of the Spanish consul. What then took place may be best described by transcribing a passage from a note from the undersigned to Mr. Lopez Roberts, dated December 28, 1870, in reply to one from Mr. Lopez Roberts, dated December 17, 1870. The undersigned then said that it appeared—

That the Hornet having been seized on the complaint of the Spanish consul only two months before the date of the correspondence, and a hearing, in which the Spanish consul took part, having resulted in the discharge of the vessel, no subsequent proof or anything in the nature of legal evidence other than a repetition of that which had already been passed upon by the court, and been decided to be insufficient for the detention of the vessel, had been furnished by the consul or by any other Spanish officials.

The subsequent career of this vessel is thus described in the memorandum accompanying the counter-case of the United States at Geneva, which is referred to in Admiral Polo's note:

She afterward, in December, 1870, sailed from New York "for Saint Thomas and a market, then to a port or ports that the captain may direct, and back to a port of the United States, not exceeding six months."

She went to Nassau, afterward to Port au Prince; then to Aspinwall, where it is alleged that a filibustering expedition against Cuba went on board of her, which expedition was afterward landed on the coast of Cuba. She then went to Port au Prince, where she was, as it were, blockaded by the Spanish gunboats for several months.

In January, 1872, the Government of the United States sent a man-of-war to Port au Prince to bring her back to the United States, where, upon her arrival, proceedings were taken for punishing any violation of the neutrality laws of the United States.

It is of little consequence now what was the character of the Hornet, so far as the purposes of this discussion are concerned. In the only moment when she was in position to have done injury as an armed vessel, she was libeled and condemned by the courts of the United States. But it is not to be assumed that the undersigned assents to *all of Admiral Polo's* opinions regarding that vessel.

The first arrest of the Hornet at Philadelphia was made August 16, 1869. It has been seen that on the same day the officers in Maine were cautioned to be vigilant. On the 21st of the same month the attention of the Acting Secretary of State was called to alleged shipments of arms and ammunition at Cedar Keys and Fernandina, in Florida, and Mr. Potestad, the secretary of the Spanish legation, was informed in reply that this Government had already, four days before, called the attention of the district attorney and marshal in Florida to the subject, and that the senior officer in charge of the North Atlantic squadron had also been apprised of the information.

On the 31st of the same month the active agents of the United States in Georgia telegraphed to the Attorney-General that eighty-three persons enlisted for the Cuban army would try to leave for Florida that night. They were immediately ordered by telegraph to stop the expedition and to indict the parties. The law-officers met with resistance and telegraphed for aid. They reported that the United States marshal had been overpowered. The Treasury immediately, by telegraph, put the revenue steam-cutters at the command of the proper authorities to stop the alleged expedition; and on the 4th of September, General Terry, commanding the Department of the South, was authorized to aid the civil authorities in maintaining the law. On the 6th of September the district attorney was able to say to the Attorney-General:

> I have the honor and satisfaction of reporting herewith the result of our effort to capture the expedition *en route* for Cuba. * * * I feel confident in asserting that the course pursued has completely broken up the expedition, at least for the present.

On the 13th of the same month this Government had received information which induced it to believe that arms and ammunition designed for Cuba were being shipped to Galveston, to be used there in arming hostile expeditions against Cuba. The district attorney of Texas was therefore directed to watch carefully for any indications of such expeditions, and to act promptly in preventing any violation of the neutrality-laws of the United States, and in punishing all persons who violated them.

On the 28th of the same month the Secretary of the Treasury was requested by the Acting Secretary of State to order the proper officials to watch a suspected vessel in New Orleans, in order to prevent her from engaging in an armed expedition against the Spanish authorities in Cuba.

On the 23d of October, 1869, the undersigned was informed by the Spanish minister that the steamer Lillian had sailed from Cedar Keys on the 5th of that month, with about 450 men on board, and that she had been seized by a British man-of-war in British waters. The undersigned subsequently learned from other sources that she had been libeled and condemned for a violation of British laws.

In the same note of the 23d of October, 1869, the Spanish minister complained of the want of energy shown by the officers of the United States in the pursuit of the Lillian, which he asserted to have been a breach of neutrality on the part of the United States. And Admiral Polo now supplements the averment by saying that the Government of the United States had ample information and notice with regard to this expedition.

Whatever notice this Government may have had respecting this expedition, it gathered through the vigilance of its own officers. The representative of Spain furnished none until after it had been captured and broken up. When the United States naval officers in the Gulf learned

that the expedition was about to start, the Tuscarora, a man-of-war of the United States, was immediately dispatched to intercept it. But she was unable to proceed to Cedar Keys in consequence of the bursting of her steam-pipe. There was no lack of diligence on the part of this Government. The undersigned is also happy to add that there was no injury to Spain, since the expedition was intercepted and broken up, so that it never reached Cuba.

On the 8th of November, 1869, the marshal of New York informed the Secretary of State that his office was employing one superintendent and two or three detectives (as circumstances might require) to learn of infringements of the neutrality laws. He was told that his course was approved, and was instructed to continue his vigilance.

On the 10th he informed the Secretary of State that he inclined to the opinion that measures were on foot to get off a Cuban expedition. The Secretary of State, thereupon, on the 11th, asked of the Secretary of the Navy if a man-of-war could be detailed to assist in preventing such unlawful expeditions. The Secretary of the Navy thereupon instructed the port admiral of New York to render every assistance in his power in preventing the departure from New York, or that vicinity, of any unlawful expeditions in aid of the Cuban insurgents. The Secretary of the Treasury at the same time placed a revenue-cutter at the command of the marshal for the same purpose. If any expedition was contemplated at that time, it is believed that it was prevented by these efficient measures.

On the 15th of November the Attorney-General called the attention of the Secretary of State to the case of the steamer General Dulce, at Philadelphia. It appeared that some circumstances excited suspicion that she might be engaged in an illegal expedition; but, on examination, it was reported that there was nothing whatever of a suspicious character, either in the vessel or her outfit.

This brief but necessarily imperfect narrative of the exertions made by the United States during the year 1869 to perform their international duties toward Spain, cannot fail to satisfy all candid persons that they exerted all the diligence in that respect which the most captious critic could require. Their active vigilance extended over a coast-line, from Eastport to Galveston, of upward of twenty degrees of latitude and about thirty degrees of longitude, with infinite sinuosities, and bays, and outlying islands. And yet it was ever and equally active. Wherever the extraordinary means of intelligence which they employed gave notice of an apprehended movement, their equally extensive means of action anticipated and prevented it. To have failed occasionally to thwart so widespread combinations would have been no subject for just crimination; because no mortal foresight can apprehend and guard against every contingency. But the undersigned avers, without fear of contradiction, that the record shows no such failure.

The undersigned does not understand that it is contended that between the sailing of the "Lillian" in October, 1869, and the sailing of the Virginius in October, 1870, any vessel except the Upton sailed with arms.

On the 22d of May, 1870, the undersigned received a telegram from the Spanish minister, from New York, in which it was averred that the "George B. Upton" had cleared from New York on the 14th of that month, ostensibly bound for Port au Prince, and was then lying off Montauk Point, at the east end of Long Island, in communication with the shore, and within the jurisdiction of the United States, and was en-

gaged in completing her fitting out for a piratical cruise against Spain, in violation of the neutrality laws of this country.

The undersigned at once communicated with the Navy Department, and a vessel was dispatched to Montauk Point, with several civil officers on board, in order to take possession of the "Upton" and proceed against her in the courts of law. On arrival at Montauk Point, the civil officers landed, and being unable to learn that any strange vessel had been there, reported their opinion that the information concerning the "Upton" was entirely without foundation. A communication from Mr. Lopez Roberts to the undersigned, on the 29th of June, 1870, showed that they were correct in that opinion; for it was then alleged by Mr. Lopez Roberts that the "Upton," after leaving the port of New York—

Proceeded to the vicinity of Barnegat light, and there communicated with the schooner "Quickstep," which (he said) had been previously sent from that place to meet the "Upton," and took from on board of her a large quantity of arms, ammunition, clothing, and other articles of war for the use of the expedition then on board of the "Upton," and of the insurgents in Cuba.

By the same note of Mr. Lopez Roberts it was disclosed, not only that he had been thus deceived in regard to the movements of the "Upton," but also in regard to her character. Instead of attempting a piratical cruise against Spain, as had been charged by Mr. Lopez Roberts, her mission was that of the peaceful conveyance of men and merchandise.

It cannot be contended that this Government had any knowledge or any reason for suspicion of the purposes of the voyage. Those who had charge of her, having had personal experience of the vigilance of the United States, and of their purpose to prevent all violations of their sovereignity, succeeded in concealing their designs, not only from this Government but from the ever-vigilant agents of Spain in New York.

Before taking up the case of the Virginius, it will be more convenient to first notice the remaining vessels referred to by Admiral Polo, but without comment on his part, viz: the "Florida," the "Edgar Stuart," the "E. D. Webster," the "Anna," and the "Fanny." The archives of this Department reveal nothing respecting the Webster and the Anna.

Respecting the Florida, they only show a complaint on the part of this Government of an interference by a Spanish gunboat with that vessel on the high seas, to which complaint no response has been given.

Respecting "the Fanny," it appears that on the 7th of June, 1872, the minister of Spain informed the undersigned that "the Fanny" had sailed the day before from Baltimore, and that her papers were fraudulent, and that he believed that the object of the steamer was to effect a clandestine landing of arms and other war-material, and perhaps even of men, on the coast of Cuba. He added that he had evidence that the customs officers of the port had had suspicions that the papers of the vessel were fraudulent. This communication being made after the vessel had sailed, the undersigned could only promise to make inquiries, which resulted in showing that the collector of customs at Baltimore, thinking it possible that the "Fanny" might be intended to form part of an expedition, had ordered her to be searched. The searching officers had reported that she had no contraband cargo. The collector had then ordered a revenue-cutter to follow her to sea, and to intercept any expedition which might appear to join her. The cutter kept her in sight until she was about seventy-five miles southeast of Cape Hatteras and about thirty-five miles off land, and there lost sight of her. Up to that time no expedition had joined her.

The facts respecting the "Edgar Stewart" appear to be these: On the

25th of May, 1872, the Spanish minister informed the undersigned that she had sailed from the district of New London, where he charged that she had been fitted out for filibustering purposes, and he submitted some affidavits which he claimed implicated the collector in a knowledge that she was destined for an illegal purpose. As the vessel had sailed, the undersigned could only ask an investigation of the charges against the collector. The decision of the Treasury was, that while the investigation exonerated the collector from positive blame in the matter, the circumstances which appeared to have been known to him, by rumor at least, would have justified him in making further and careful inquiries; and he was told that, in any similar case that might arise in the future, he would be expected to exercise greater vigilance in ascertaining the facts. This vessel is now in Baltimore. The minister from Spain has submitted affidavits in order to establish that she was guilty of a violation of the neutrality law of the United States, at New London, in 1872; also that she contemplates another violation; also that she obtained her clearance at New London in fraud of the navigation laws. These affidavits, as fast as received, were submitted to the Attorney-General, and the vessel has been libeled on the alleged charges, and is now in custody.

The schooner "Resolute," a vessel not referred to by Admiral Polo, about March, 1872, sailed from New York to Jamaica, without exciting the suspicion of the Spanish agents in New York, or of this Government. It is probable that there were no reasons at that time why suspicion should have been excited. From Jamaica she went to Saint Mark's, and from Saint Mark's to Port au Prince; while there she was, on the 4th of June, 1872, transferred to Augustus Cheaveau, described in the instrument of transfer, a copy of which afterward came into the possession of the United States, as "a citizen of the republic of Cuba." There she took in ammunition and arms, and proceeded northward, landing Cheaveau at Charleston. She hoisted an ensign called "the flag of the republic of Cuba," and professed to be a vessel belonging to the navy of such so-called republic. With the change of character she took the name of "Pioneer." Coming near the waters of the United States, this vessel was seized by the United States revenue-cutter "Moccasin," and taken into Newport, R. I., where she was libeled and condemned.

Having now disposed of the extraneous matter which has been introduced into the discussion of the case of the Virginius, the undersigned is prepared to consider Admiral Polo's remarks upon that vessel.

The Virginius, formerly a blockade-runner, was sold by the United States to one Paterson, a citizen of the United States, apparently an innocent person. He proved to be an agent of the Cuban insurgents, but that fact was not known to the Government of the United States, nor had it any means of knowing it.

She was registered at the custom-house in New York, and took out a clearance for Curaçoa. Her custom-house bond was in the regular form, except that it had but one surety, a circumstance not unusual, and which will be noticed hereafter. There was nothing in her manifest or papers, or in the circumstances connected with her departure, to attract attention or to excite suspicion, and she left, like any of the other hundred vessels leaving the same week, without attracting the attention of the Spanish consul or of the officers of this Government.

The labor which Admiral Polo bestows to endeavor to connect the United States with the subsequent proceedings of the vessel before her capture by the Tornado, shows that he comprehends the inability of maintaining that the United States are liable for the consequences

of any acts of this vessel by reason of what took place at the time of her sailing from New York.

The Virginius is understood to have made her voyage to Curaçoa. Admiral Polo indeed asserts that her true destination was not Curaçoa, and he seeks to find in the character of her cargo, (breadstuffs, saddlery, and clothing,) reasons why she should have been suspected by a customs officer. But the undersigned understands that she actually did go to Curaçoa, which is the best answer to an allegation that she was not to go there; and the undersigned cannot persuade himself that the accomplished minister of Spain will seriously contend that because her innocent manifest did not produce conviction in a customs officer's mind that she was on an illegal errand, this Government should be made responsible for her acts. Moreover, the statistical returns of the commerce and navigation of the United States (like those of most other manufacturing and commercial nations) show that the exportation of breadstuffs, saddlery, and clothing is not an unusual occurrence in the course of legitimate commerce, and that if the lading of such articles is to be a cause of suspicion, a large amount of honest trade must be placed under vigilance. The commerce of the world will not allow the laws of contraband to be carried to this extreme. The proposition needs only to be stated to be repudiated.

The Virginius was recognized as a vessel of the United States from time to time at different ports in the Caribbean sea, thus showing that she was engaged in commerce there. Admiral Polo records, with what purpose the undersigned is at a loss to imagine, an interview between a Spanish naval officer and a naval officer of the United States, in which the former denounced her to the latter as a "pirate" without a single indication of what is known as "piracy," and asked him to take her to the United States; the gallant officer of Spain, with the earnestness and unselfish generosity characteristic of his profession, but without official responsibility for the proposal he made, and without evidence of the extent of his personal responsibility, offering, if Spain should fail to establish there the fact of her "piracy," to himself assume the obligation of paying all damage.

The undersigned will not do Admiral Polo the injustice to suppose that he himself would regard the Virginius as a "pirate," or that, had the position been reversed, and had an American naval officer made such an offer to Admiral Polo, he would for a moment have dreamed of entertaining it.

That the vessel had none of the characteristics of a "pirate," as defined by international law, is beyond doubt. If Sheppard and Varona testify, as is alleged, to the proposition to attack the commerce of Spain, neither they nor others even intimate that such an attack was made. The declaration may prove the witnesses willing to have become pirates; it may not strengthen their credibility as witnesses in behalf of Spain; and yet Spain cannot impeach them when they say that they stopped short of the act. And yet it is upon such evidence that the reiterated appellation of "pirate" and denunciations of "piracy" rest. If all that Spain alleges against the Virginius be admitted as proven, it would fail to constitute what is recognized as piracy by the nations of the world.

Admiral Polo says that the Virginius after leaving New York "was efficaciously protected by the consuls and men-of-war of the United States;" and he then adds, "thanks to which protection she succeeded in forming for herself, outside of the material territory of

the United States, but within their legal jurisdiction, a sort of base, whence the Virginius was enabled to commit hostilities against Spain."

As the Virginius never returned within the material territory of the United States, after her departure from New York in October, 1870, the last phrase quoted in Admiral Polo's note may be important in some future contingencies, in its assertion of the extent of the legal jurisdiction of a state beyond its geographical limits. But it need not be here commented on further than to say that the idea of a vessel converting itself into "a sort of base," whence that same vessel carries on hostilities, involves a paradox resulting from the effort to apply the doctrine of the duty of a state not to permit its ports or its national waters to be made the base of naval operations by one belligerent against another, to a case where no belligerency is recognized as existing, and where, in fact, no hostile naval operations have occurred.

Of what military expedition the Virginius was to form part, it is difficult to comprehend. The present most intelligent minister from Spain charges that she was to form part of some military expedition, but he has not shown either her capacity or fitness to take part in a military expedition, or that there was at that time any military expedition fitting out, of which she was to form a part, or with which he in any way connects her. Admiral Polo's watchful and indefatigable predecessor, who never failed to present in the strongest light all that his consuls could obtain through the detectives, and the questionable class of paid spies and witnesses, in a note addressed to the undersigned on the 17th of December, 1870, more than ten weeks after the Virginius had sailed from New York, in which he enumerated the vessels of which he thought he had cause to complain, had no suspicion that the Virginius had sailed with any evil purpose, and makes no reference to her.

If she had eluded the argus eyes of the detectives of the Spanish government, the inference is irresistible, either that her objects and designs at the time of her sailing were not improper, or if they were at that time such as the Spanish minister now alleges them to have been, they were so carefully covered and concealed as to escape the vigilance of the Spanish officials as well as of those of this Government.

It has already been remarked that in view of the extent of the territory of the United States and the long range of sea-coast, and of the number of disaffected Spanish subjects in the country, the undersigned had expressly given authority to the Spanish minister (Mr. Roberts) to instruct his consuls, in case any information of illegal actions or intents came to their knowledge, to confer directly with the local Federal officers. They exercised the right thus accorded them, and if there had been any reason for suspecting the Virginius at the time she left the United States they would have known thereof. But she sailed unsuspected alike by the Spanish minister, the Spanish consul, and their detectives—unsuspected also by the United States.

Admiral Polo endeavors, however, to make certain alleged irregularities, or acts of non-observance of some of the requirements of the shipping acts of the United States, evidences of wrong intent on the part of the Virginius, and therefrom to deduce some responsibility on the part of the Government.

The shipping-laws of the United States are municipal regulations which it prescribes for itself, and to its own citizens, and the administration of which it intrusts to its own officers. It judges of the requirements and of the formalities to be observed to give its national character to private trading-vessels, and reserves to itself the punishment of evasions or omission of those requirements or formalities.

In the exercise of this sovereign right, the United States have required that a certain bond be executed with certain securities, and certain oaths be taken, for the obtaining of a register by a merchant-ship. It requires that the ownership be in its own citizens.

Should a register be obtained in fraud upon its laws, or, having been obtained, should the ownership be changed otherwise than in conformity with its laws, it has prescribed the penalty and the consequences. It enforces this penalty, and the punishment denounced against violations of these laws, as it does with respect to other municipal enactments of its own volition and in its own way. Foreign states are not expected to interpose, or to prescribe to the United States the mode or manner of enforcing its municipal laws, or the degree of leniency or the measure of severity to be observed toward those who may be supposed to have violated its enactments.

The omission to comply with the requirements of the laws may, at the option of the Government, deprive a vessel of its national character, and of its right to the protection of the Government. This result may follow from innocent omissions, and from accidental mistakes. The haste with which many commercial transactions are conducted has led in many instances to carelessness, and has, as is well known, been attended with omissions, which, if enforced, might deprive some of the well-known and most honest of the mercantile marine of a government of the protection of its national character, if the strict letter of the law were in all cases to be enforced.

Knowing this to be the fact in its own case, as well as in that of every commercial nation, the United States does not feel called upon in every instance to exact the pound of flesh and to enforce the utmost penalties of the law. It recognizes a difference between error and falsehood, and has not been guilty of the want of logic to enact that the omission to sign a bond in the prescribed form necessarily makes the register "false," or of the still greater fallacy of reasoning and of logic, that "the falsity of the register, of the ship's roll, of the list of passengers, of the manifest, and of the clearance," shows that the voyage of an unarmed vessel admittedly made in accordance with her clearance was a military expedition against a country which the vessel did not visit for months subsequently, nor until she had visited divers others countries.

The long extract to which his excellency the Spanish minister calls the attention of the undersigned as doctrine laid down by a judge of the Supreme Court of the United States, is, unfortunately for the citation, not to be found in any book of decisions or of judicial authority. It could not be accepted before any judicial tribunal as authority or as a definition of law.

It is feared that his excellency the Spanish minister has been misinformed as to the nature and importance of this alleged expression, and has been misled by some newspaper extract or report of possibly some charge to a grand jury by some person who may at some time have been a judge. But his excellency may be assured that if the expressions which he has quoted were made by a judge of the Supreme Court of the United States, they certainly were not made by one who served out the term for which he was appointed; and that whatsoever of personal respect may be due to the unnamed author, the authority of the high court of which he is supposed to have been a member cannot attach to the citation.

The undersigned (while denying the untenable doctrine advanced by Admiral Polo, that in case it should be made to appear that an expedition hostile to Spain had unlawfully departed from the shores of the

United States, the burden of proof would be on them to show that they had used due diligence to prevent it) feels that he has fully established that this Government, from the outbreak of the insurrection at Yara to this moment, has unremittingly and vigilantly performed the full measure of its international duties toward Spain. Even, therefore, could it be shown that Spain had suffered any appreciable injury which could be made the subject of computation of damage between nations, by reason of any of the vessels referred to in Admiral Polo's note of the 2d of February, no responsibility for such injury could be entailed upon the United States.

But the undersigned apprehends that not even the ingenuity and learning of Admiral Polo can, after the great precedent at Geneva, establish that claims of the nature now advanced on behalf of Spain do "constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation, or computation of damage between nations."

Admiral Polo indeed asserts that private injuries may have been inflicted by the Virginius. But no proof is offered of such injuries; and the undersigned is so fully persuaded that no private injuries were inflicted by any of the vessels enumerated by Admiral Polo, that he is constrained to disregard the hypothetical suggestion, and to declare that this Government is firmly convinced that no injury has been suffered by Spain for which reclamation can be demanded.

In the great tribunal which was convened at Geneva, the learned representatives of five powers, with the eyes of the whole civilized world turned upon them, declared that losses in the transfer of the commercial marine from the flag of a belligerent to that of a neutral, that enhanced payments of insurance, that the prolongation of a war, and that the addition of a large sum to the cost of a war and the suppression of a rebellion, do not constitute, on the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations. And the same tribunal, in another session, decided that a claim advanced by the United States for re-imbursement of the sums expended by them in the pursuit of the rebel cruisers should be rejected, because such expenditure was comprised in the cost of the war.

The United States have in good faith accepted these principles thus enunciated by this great tribunal. If Spain is disposed to question them, the undersigned, while deeply and sincerely regretting it, must respectfully decline a discussion upon principles which this Government regards as *res adjudicatæ*.

For the first time it is brought to the official notice of the undersigned, by the official note of the envoy and minister of Spain of the 2d of February, that Manuel Quesada was sent to this Government in 1870 in the character of an envoy; and the representative of Spain has adopted and incorporated in his note a statement of Mr. Quesada, by which it appears that property, amounting to several hundred millions of dollars, belonging to Cubans, has been confiscated by the authorities of Spain. Such severe measures thus admitted by Spain would seem to furnish a partial explanation of the activity of the Cuban exiles; and would certainly seem to indicate that Spain has been no sufferer in this contest.

Admiral Polo closes his long and able note by what it may not be unjust to style a complaint at the asylum given in the United States to the refugees from the violence of the Casino Español and of the Havana volunteers.

This makes it proper that the undersigned should submit a few

remarks upon the general political relations of the United States to this unhappy controversy.

When the President entered upon the duties of his office in March, 1869, the Cuban insurrection was the first external question pressed upon his attention. The correspondence between Mr. Lopez Roberts and the undersigned, and the steps taken to maintain the international obligations of the United States toward Spain, have already been noticed.

It was found that the rights of citizens of the United States were affected by the action of the authorities in the island in their efforts to suppress the insurrection, and Mr. Lopez Roberts was, on the request of this Government, authorized, in conjunction with the captain-general of Cuba, and without consulting the Spanish government, to settle questions arising with the Government of the United States or with its citizens, out of the occurrences taking place in that island, excepting cases of such gravity as might require consultation with the home government.

Under this arrangement, various representations were from time to time made to Mr. Roberts, and some few questions were thus amicably adjusted.

During this time Mr. Roberts gave frequent assurances that the insurrection was being crushed, that it was at an end, that nothing remained in resistance to the government but a few individuals who were scattered and had taken refuge in the woods. He read to the undersigned telegrams or notes to this effect. Finally, in the spring or summer of 1870, the power given to Mr. Roberts was withdrawn by the government at Madrid, "in view," as the undersigned was officially informed, "of the favorable situation in which the island of Cuba then was."

Simultaneously with some of these proceedings political negotiations had taken place in Madrid. In compliance with suggestions which were understood to emanate from a high quarter in Spain, the President had indicated a willingness to proffer the good offices of the United States to secure a peaceful termination of the insurrection. The advances of the President were well received at Madrid; and although no practicable basis for continuing the negotiations was found, the representative of the United States was repeatedly assured that substantial reforms were to be granted to Cuba, and that provision was to be made for putting a speedy end to slavery.

By the slaveholders' revolution of June, 1869, in Havana, General Dulce, whose "generous moderation" is feelingly and appreciatingly referred to by Admiral Polo, was driven out of the island, and the substance of political power passed into the hands of the Casino Español, where it has since remained. But, in spite of this, the government at Madrid continued its assurances respecting liberal reforms and the freedom of the slaves.

While the President was exercising the extreme powers of the Government, as already described, to counteract the incessant efforts of Spanish subjects who had taken refuge in this country, and, availing themselves of its large extent, of the latitude of liberty and freedom of conscience which its laws and its policy allow to the citizen and to the stranger, were endeavoring to involve this country in embarrassments with Spain, cases of injuries to American citizens and their properties were arising which could not be adjusted by the undersigned and the minister of Spain. It was, therefore, a relief to be assured by Mr. Lopez Roberts that the insurrection was waning and was practically at an

end, and to have that assurance confirmed by the official announcement that the Spanish government regarded the situation in Cuba as so favorable as to justify it in withdrawing the power which it had given to its minister in this country and to the captain-general in Cuba to adjust the questions which might arise with regard to interests of citizens of the United States affected by occurrences in Cuba.

The unadjusted cases were therefore referred to Madrid for adjustment, and there, after a long delay, in marked contrast to the prompt action of this Government when the interests of Spain were affected, an agreement was entered into for their reference to the tribunal at Washington, already referred to.

The announcement of the practical close of the insurrection and of the withdrawal by Spain, on the ground of the favorable situation of the island, of the only concession made by her toward the reparation of the rights, or the prevention of acts injuriously affecting the interests of American citizens, were well calculated to lead to a relaxation of the severe tension to which the vigilance of this Government had for several months been subjected, and might well be pleaded in justification in case of any omission of vigilance.

The President on the 12th of October, 1870, issued his proclamation, in which, after reciting that there was reason to apprehend that evil-disposed persons had set on foot military expeditions, and fitted out vessels to act against powers with whom the United States were at peace, he continued:

> Now, therefore, I, Ulysses S. Grant, President of the United States of America, do hereby declare and proclaim that all persons hereafter found within the territory or jurisdiction of the United States, committing any of the afore-recited violations of law, or any similar violations of the sovereignty of the United States for which punishment is provided by law, will be rigorously prosecuted therefor, and, upon conviction and sentence to punishment, will not be entitled to expect or receive the clemency of the Executive to save them from the consequences of their guilt; and I enjoin upon every officer of this Government, civil, or military, or naval, to use all efforts in his power to arrest, for trial and punishment, every such offender against the laws providing for the performance of our sacred obligations to friendly powers.

On the 17th day of the following December, the esteemed predecessor of Admiral Polo, Mr. Lopez Roberts, addressed to the undersigned the two notes which have been frequently referred to in this paper. He made several statements respecting the "Hornet," the "Perrit," the "Upton," the "Catharine Whiting," which are substantially repeated in Admiral Polo's note. He said nothing of the "Lowell," the "Salvador," the "Grapeshot," the "Lillian," or the "Virginius." He complained of the clemency of the United States in releasing the "Hornet" at Wilmington, and in not prosecuting several persons, whose names he gave as having been concerned in the affair of the "Hornet," or of the "Catharine Whiting," or of the "Upton." He also complained that no proceedings were pressed against the "Catharine Whiting," the "H. McCool," and the "Jonathan Chase."

Admiral Polo now renews many of these complaints, and the undersigned can, in response, only renew the answer given to Admiral Polo's predecessor, that the withdrawal of the power from Mr. Lopez Roberts to settle by agreement, in connection with the captain-general of Cuba, without consulting the Spanish government, questions arising with this Government or its citizens, and the repeated assurances of Mr. Lopez Roberts, that the insurrection was virtually suppressed, induced this Government to believe that the time had come for the exercise of clemency.

The undersigned then continued thus in his reply to Mr. Lopez Roberts:

The President did not and would not suppose that the government of Spain would lessen the means of protection to the persons and properties of citizens of the United States in Cuba, which it had extended during the insurrection at the request of this Government, unless it was convinced that the insurrection, which made it necessary, had virtually ceased. He could not and would not assume that a government which had maintained such friendly relations with this Government would voluntarily do so unfriendly an act as to withdraw, without notice, the powers conferred upon Mr. Lopez Roberts at its request, unless it was convinced that the necessity for them had ceased in consequence of the suppression of the insurrection. He was pleased to believe that, in the opinion of the Spanish government, the danger from the insurrection was over; that the time for milder measures had come, and that the blessings of peace were to follow. It did not appear to him that the restraints upon the commerce of the United States and upon the free movements of their citizens—measures which had been taken because the maintenance of the obligations of the United States as one of the family of nations appeared to require them—should be longer imposed. It did not seem to this Government that good could come from continuing preventive, much less punitive, proceedings against individuals or vessels, when the cause which prompted the alleged illegal acts was supposed to have disappeared. It was believed to be in harmony with the humane policy which has characterized this Government, that a suspension of the rigid prosecution of offenses (partaking of a political character) growing out of a sympathy with a political struggle in a neighboring island, might well take place. It was hoped that the benevolent example of the United States in this respect might. perhaps, be reflected in the policy of Spain toward Cuba. It was believed that the reforms which had been so often promised to the representative of the United States at Madrid were about to be granted; that the blot of slavery would disappear; that the right of colonial self-government would be given to the island; that the burdensome system of taxation would be abolished, and that, peace being restored, all the desired reforms being granted, and amnesty and pardon being given, the Government of the United States would be relieved from the disagreeable duties which it had performed for about two years.

Mr. Lopez Roberts will find in these considerations an evidence of the generous purposes and desires of the Government of the United States toward his government and toward the island of Cuba, and its logical action in reliance upon the promises and the representations of the Spanish government, and of its esteemed representative to this Government. He will permit the undersigned also to say (in reply to his suggestion that these persons have been stimulated and encouraged by the indulgence hitherto shown them by a benevolent government) that it seems to the undersigned that they have found their encouragement and their stimulus, not in the humane course of this Government, but in that love of liberty and in that sympathy with communities struggling against oppression and for freedom, which is the portion of all generous natures; and that such stimulus and encouragement will fail them when Spain shall imitate the benign policy of the United States.

For five years the policy of repression, of confiscation, of summary execution of political prisoners, of refusal of reforms, of denial of self-government, of maintenance of slavery, in short, the policy of violence and force, has held sway in Cuba. It is understood that the insurrection calls to-day for as many troops to keep it in restraint as were necessary in 1869.

During these five years this Government has watched events in Cuba, perhaps not always patiently, but certainly always impartially. It has seen vessels sailing under its flag intercepted on the high seas and carried into Spanish ports. It has seen the property of its citizens embargoed and their revenues sequestrated, and when it has complained it has been met by promises of restoration; but the official assurances of Spain in that respect have in most cases not been complied with. It has seen its citizens condemned to death under the form of military law, and executed in violation of the treaty obligations of Spain. It has seen other citizens of the United States mobbed in the streets of Havana for no other reason than that they were citizens of the United States, or the accidental circumstance of the color of the dress. It has stretched its powers and interfered with the liberties of its citizens in order to fulfill all its duties as a sovereign nation toward the power which in Cuba was tolerating the evil influences of reaction, and of slavery, and of "the deplorable

and pertinacious tradition of despotism" referred to by the minister of transmarine affairs, all of which made the things complained of possible. It has refrained from the assertion of its rights, under the hope, derived from the constant assurances of the government of Spain, that liberty and self-government would be accorded to Cuba, that African slavery would be driven out from its last resting-place in Christendom, and that the instruments of the Casino Español would be restrained in their violence, and made to obey law, and to respect the treaty obligations of Spain.

But while so doing, it expected and still confidently expects the time not to be far distant, when Spain will make reparation for the wrongs which have thus been inflicted upon their citizens.

The undersigned has seen with much satisfaction in the several efforts of the cabinet of Madrid, in opposition to the wishes and policy of the slaveholders of Cuba, proof of a desire of the Spanish government to correct the abuses of which this Government complains. Later signs, however, give cause to fear that the hand which holds human beings in bondage still is powerful.

The undersigned, in conclusion, renews the expression of the expectation of this Government that the oft-repeated assurances of the cabinet of Madrid with respect to Cuba may be carried into effect.

The undersigned avails himself of this occasion to renew to Admiral Polo the assurances of his most distinguished consideration.

HAMILTON FISH.

His Excellency Señor Don JOSÉ POLO DE BERNABÉ,
&c., &c., &c.

No. 22.

Mr. Young to Mr. Fish.

No. 109 *bis.*] UNITED STATES CONSULATE,
Santiago de Cuba, Dec. 18, 1873. (Received December 30.)

SIR: I have the honor to transmit herewith a complete list of the persons taken from on board the United States merchant-steamer Virginius. I was present on board of the United States steamer Juniata, at the solicitation of Commander D. S. Braine, when the remaining prisoners were delivered on board this morning. Those checked are the persons delivered, and those not checked are the names of those shot. I improve this opportunity to send this direct, as the Juniata leaves for New York at 5 p. m. to-day.

A. N. YOUNG.

[Inclosure in No. 109.]

List of 155 people captured on board the American steamer Virginius by the Spanish steamer Tornado, brought to the port of Santiago de Cuba, and turned over to the authorities.

Name.	Where from.	Married or single.	Age.	Occupation.
1. Joseph Fry	United States	Married	47	Captain merchant-vessel.
2. William Baynard	do	Single	37	Mate merchant-vessel.
3. James Floody	England	Married	25	Do.
4. J. C. Harris	United States	do	45	Miner.
5. John N. Boza	Puerto Principe	do	37	Farmer.
6. B. P. Chamberlain	New York	Single	27	Engineer.
7. *Francisco* Sotero Trujillo	Bayamo	do	37	Do.

List of 155 people captured on board the American steamer Virginius, &c.—Continued.

Name.	Where from.	Married or single.	Age.	Occupation.
8. Edward Day	New York	Married	32	Engineer.
9. Perfirio Corbison	Santiago de Cuba	Single	26	Commerce.
10. John Williamson	United States	do	35	Oiler.
11. Peter Alfaro	Havana	do	26	Purser's clerk.
12. Thomas Grigg	Barbadoes	do	30	Mariner.
13. Frank Good	Jamaica	Married	37	Do.
14. Paul Rhuner	Ireland	Single	40	Fireman.
15. Barney Herrals	England	do	28	Do.
16. James Samuel	do	do	20	Mariner.
17. Hervey Frank	Barbadoes	do	21	Coal-heaver.
18. James Read	Africa	do	40	Fireman.
19. Samuel Card	Nassau	Married	24	Mariner.
20. John Brown	United States	Single	22	Do.
21. Alfred Hosel	England	do	22	Do.
22. Wallen Fied Price	do	do	20	Do.
23. George Thomas	Jamaica	do	22	Do.
24. Thomas M. Williams	England	Married	26	Fireman.
25. Ezequiel Dunham	Canary Island	Single	27	Mariner.
26. Simon Brown	Nassau	do	29	Waiter.
27. Leopold Thomas La Rose	United States	do	18	Cabin-boy.
28. Alcazo Arcey	Trinidad	Married	38	Farmer.
29. William Rose	Scotland	Single	23	Mariner.
30. John Stewart	Sta. Martha, Venezuela.	do	29	Do.
31. Henry M. Bond	England	Married	45	Do.
32. George Thompson	do	do	36	Do.
33. Ignacio Dueñas	Barranquilla, Colo.	Single	27	Cook.
34. Antonio Deloyo	Bolivia	Widower	30	Mariner.
35. Jos. Man. Ferran	Jamaica	Single	22	Cook.
36. Ramon Larramendi	Bayamo	do	27	Farmer.
37. Eusebio Gariza	Barranquilla, Colo.	do	22	Do.
38. Bernabé Varona	Puerto Principe	do	27	Proprietor.
39. Pedro Cespedes	Bayamo	Married	47	No occupation.
40. Arthur Mola	Puerto Principe	Single	19	Agricultor.
41. Francisco de Powas	Havana	do	19	Cabinet-maker.
42. Luis Sanchez, (his real name, Herminio Quesada.)	Puerto Principe	do	18	Student.
43. Joseph Boitel	Cardenas	do	26	Agricultor.
44. Augustin Varona	Puerto Principe	do	28	No occupation.
45. Salvador Penedo	Nuevitas	do	23	Merchant.
46. Henry Castellano	Giiines	do	29	App. machinist.
47. Jesus del Sol	Cienfuegos	do	38	Farmer.
48. José Otero	Havana	do	27	Cigar-maker.
49. Francisco Rivera, (his real name, Augustin Sta. Rosa.)	do	do	40	Do.
50. Oscar Varona	Puerto Principe	do	19	Student.
51. Justo Consuegra	Sta. Clara, Cuba	do	25	Mechanic.
52. William Valls	Puerto Principe	do	25	Commerce.
53. W. A. C. Ryan	Canada	do	28	Lawyer.
54. Charles Knight	England	Married	21	Engineer.
55. Henry King	United States	Single	27	Do.
56. William Wilson	Canada	do	24	Mariner.
57. Thomas Lindgly	Jamaica	do	18	Do.
58. Charles Debrosse	do	do	18	Printer.
59. William Danton	do	do	17	Tailor.
60. John Pothremonth	do	do	17	Tinsmith.
61. Edward Scott	Jamaica, U. S	do	16	Do.
62. John Freemont	Curaçoa	Married	16	Mariner.
63. Nicolas Cardozo	Colombia	Single	14	Waiter.
64. José del Espiritu Santo	Jamaica	do	16	Cook.
65. Alfred Parker	United States	Married	31	Mariner.
66. Henry Knight	New York	Single	16	No profession.
67. Philip Marty	Curaçoa	do	20	Engineer.
68. Antonio Constantine			14	On board Spanish gunboat Cuba Española.
69. Joseph Diaz	San Juan de los Baños.	Married	29	Farmer.
70. Juan Herrero	Havana	Single	34	Cigar-maker.
71. Alfred Lopez	Santiago de las Vegas.	do	19	Do.
72. José Igno. Lamas	Matanzas	do	23	Engineer.
73. Andrew Acosta	Giiines	do	24	Mechanic.
74. Francisco Castello	Regla	do	21	Student.
75. Benjamin Olazaga	Puerto Principe	do	17	Engineer.
76. José Madeo	Havana	do	24	Cigar-maker.
77. Ramon Pardos	Jamaica	do	32	Cook.
78. Francisco Gonzales	Havana	do	33	Student.
79. Joseph Pelaez	Malaga	do	15	Do.
80. Leonardo Alvarez	Santiago de Cuba	do	16	Silversmith.
81. Julio Arango	Puerto Principe	do	16	No profession.
82. José Hernandez	Havana	do	20	Merchant.
83. Nicolas Ramirez	*Puerto Principe*	do	23	Farmer.

List of 155 people captured on board the American steamer Virginius, &c.—Continued.

Name.	Where from.	Married or single.	Age.	Occupation.
84. Igno. Quintin Beltran	Andalgo	Single	35	Clerk.
85. Perfecto Bello	Havana	Married	24	Actor.
86. Benoit Globes	France	Single	34	Cook.
87. Nicolas Ruiz	Matanzas	do	26	Cigar-maker.
88. Juan Alvarado	Havana	do	34	Do.
89. Andrew Villa	do	do	24	Do.
90. Ricardo Trujillo	Cienfuegos	do	20	Student.
91. Ramon Calvo	Havana	do	40	No profession.
92. Silverio Sales	Colon	do	26	Mason.
93. Rafael Pacheco	Havana	do	39	Cigar-maker.
94. Alexander Calvo	do	do	39	Commerce.
95. Canuto Guerra	Melena, Cuba	do	22	Cigar-maker.
96. Canuto Sanz	Havana	do	25	Mason.
97. Leon Bernal	Puerto Principe	do	25	Agriculturor.
98. Emilio Garcia	Cardenas	do	20	Carpenter.
99. Gil Montes	Güines	do	23	Cigar-maker.
100. Rafael Cabrera	Havana	do	20	No profession.
101. Amador Rosillo	Bayamo	do	18	Farmer.
102. Igno. or Francisco W. Tapia	Havana	do	24	Commerce.
103. Manuel Silveria	Bayamo	do	18	Do.
104. Santiago Rivera	St. Thomas	do	17	Trimmings.
105. Antonio Gomez	Havana	do	39	Cigar-maker.
106. Andrew Echevarria	Holquin	Married	24	Agricultor.
107. José Marin	Havana	Single	24	Carpenter.
108. Luis Martinez	Cuba	do	18	Baker.
109. Domingo Salazar	Havana	Widower	27	Cigar-maker.
110. Pedro Pajarin	Cardenas	Single	26	Do.
111. Manuel Padron	Havana	do	17	Do.
112. Alexander Cruz Estrada	Canary Island	do	20	Blacksmith.
113. Juan Soto	Havana	Married	28	Mechanic.
114. Felix Fernandez	do	Single	29	Commerce.
115. Manuel Perez	do	Widower	29	Cigar-maker.
116. José Anto. Ramos	do	Single	18	Do.
117. Ramon Barrero	do	do	19	Do.
118. Ignacio Valdes	do	do	22	Commerce.
119. Luis Felix Morejon	Matanzas	do	16	Silversmith.
120. José Santiesteban	Cobre	do	30	Carpenter.
121. Francisco Pacheco	Porto Rico	do	15	Tinsmith.
122. Evaristo Sunsunegui	Havana	do	17	Student.
123. Raymond Gonzalez	Matanzas	do	18	Commerce.
124. Antonio Chacon	Havana	do	30	Cigar maker.
125. Sireno Otero	Colon	do	17	Student.
126. Carlos Pacheco	Havana	Married	34	Cigar-maker.
127. Antonio Padilla	Puerto Principe	Single	27	Machinist.
128. Henry Canals	Pinal del Rio, Isle de Pino.	do	22	Commerce.
129. Indalecio Trujillo	Güines	do	21	Farmer.
130. Domingo Dias	Trinidad	do	23	Student.
131. Pedro Sariol	Havana	do	21	Cigar-maker.
132. Pedro Saez	do	Widower	23	Student.
133. Miguel Sayers	Santiago de Cuba	Single	18	Farmer.
134. Severo Mendive	Regla, Cuba	do	20	Student.
135. Patricio Martinez	Havana	do	18	No profession.
136. Henry Alaya	do	do	29	Commerce.
137. Manuel Saumell	Manzanillo	do	13	No profession.
138. Domingo Rodrigues	Havana	do	30	Cigar-maker.
139. Luis Rebollo	Trinidad	do	19	Commerce.
140. Antonio Rivera	Porto Rico	do	20	Machinist.
141. Carlos Marin	Havana	do	24	Student.
142. Ramon R. de Armas	Puerto Principe	do	25	Commerce.
143. Manuel Menesses	Philadelphia	do	28	Surgeon-dentist.
144. Philip Meitzler	Charleston	do	21	Cigar-maker.
145. William Curtis	Jamaica	do	22	Tinsmith.
146. Samuel Hale	do	do	15	No occupation.
147. Samuel Gray	Harrisburgh	do	21	Carpenter.
148. Sidney Robertson	Jamaica	do	20	Saddler.
149. George Winters	do	do	17	Shoemaker.
150. William Marshall	do	do	13	Apprentice.
151. Even Pinto	do	do	15	Cigar-maker.
152. George Burke	do	do	13	Apprent'e painter.
153. Carlos Gonzalez	Matanzas	do	22	Cigar-maker.
154. Leopold Rizo	Havana	do	25	Lawyer.
155. José Rudesindo	Barranquilla, Colo.	do	25	Cook.

The one hundred and two names checked were delivered on board the United States steamer Juniata, Commander D. S. Braine commanding, this 18th December, 1873, in my presence.

A. N. YOUNG,
Consul of United States of America at Santiago de Cuba.

[The names checked in the MS. are those which are numbered from 54 to 155, inclusive, in the above list.]

No. 23.

Mr. Fish to Mr. Cushing.

No. 4.] DEPARTMENT OF STATE,
Washington, February 10, 1874.

SIR: You will receive herewith a copy of various instructions, dispatches, notes, &c., in regard to the steamer Virginius. You are familiar with the general history of that vessel, and you have received in personal interviews and intercourse the general ideas and views of the Government with respect thereto, all which you will find set forth in the papers herewith. I shall not, therefore, review them here.

The protocol of conference between myself and the Spanish minister on the 29th of November last, which disposed provisionally of the question of the steamer Virginius, was based on previous discussions, the substance of which you will find in certain memoranda among the accompanying papers, especially those of November 21, November 25, and November 27, by which it appears that this Government in its own interest, as well as in the interest of all maritime powers, denies the right of any other power to capture or molest on the high seas in time of peace any regularly documented vessel, bearing, as such, the flag of the United States, and reserves to itself the right to inquire whether, by reason of any act of such vessel, she should have ceased to be entitled to the protection of the United States.

It was in obedience to this doctrine of public law that Spain, by the protocol above mentioned, agreed to restore the Virginius and the survivors of her passengers and crew forthwith, leaving it open to Spain to prove to the satisfaction of this Government, if she could, that the Virginius was not entitled to carry the flag of the United States.

This admission of the illegality of the capture of the ship involved, of necessity, not only admission of the illegality of the capture of her crew and her passengers, but admission also of the wrongfulness of the summary execution of fifty-three of her crew or passengers at Santiago de Cuba.

The wrongfulness of the general act of the local authorities of Cuba in this respect was not confined to such of the passengers and crew as were citizens of the United States; it applied to all other persons, of whatever nationality, captured on board the Virginius.

As to such of the persons as were citizens of the United States additional wrong was committed, that of subjecting them to imprisonment without communicátion, and that of trying and condemning them in violation, as to manner and form, of the stipulations of treaty between the United States and Spain. The views of the Government in this respect are explicitly set forth in various of the documents annexed to your instructions.

Although no special reference to this question appears in the protocol of the 29th of November, still it was not lost sight of at the time, and is among the questions contemplated by the stipulation of the protocol in the words, "other reciprocal reclamations to be the subject of consideration and arrangement between the two governments."

Spain has already availed herself of the right thus reserved by presenting reclamation for indemnity, on account of alleged injuries done to her by the Virginius. You will find a copy of notes of Admiral Polo (the Spanish minister at this capital) on this subject, of the dates of December 30, 1873, and February 2, 1874, and a reply of this Department to the former, among the papers accompanying this instruction. The latter of the minister's notes has not yet been answered.

You are now instructed to make reclamation on the Spanish government for injuries to the crew and passengers of the Virginius, by reason of their capture and imprisonment; and more especially to call for indemnity to the families of such of the crew and passengers as were executed at Santiago de Cuba. In doing this, it will not be necessary at the outset to open a discussion in detail of the various particular questions involved in the general question, such as the right of the United States to claim redress for injury done to subjects of Spain, whether innocent or charged with complicity in the insurrection, or with other offenses, or to subjects of Great Britain or other powers, or only for injury done to citizens of the United States. All these particular questions, as also that of the amount or form of reparation, may be left by you for consideration until after response shall have been made by the Spanish government to the general demand for reparation in the premises. It will be in season then to judge how far the United States will go in a claim of indemnity of this nature as to persons, and in reference to a vessel of the character of the Virginius.

It will be proper for you to note that, according to the stipulations of the protocol, this reclamation is one of the possible differences between the two governments, which may be made the subject of arbitration.

I am, &c.,

HAMILTON FISH.

No. 24.

Mr. Fish to Mr. Cushing.

No. 18.] DEPARTMENT OF STATE,
Washington, April 24, 1874.

SIR: Inclosed is transmitted for your information a copy of further correspondence between this Department and the minister of Spain at Washington respecting the Virginius, and the course of the United States towards the insurrection in Cuba. You will please regard these inclosures for the present as confidential.

I am, &c.,

HAMILTON FISH.

Inclosures.

1. Admiral Polo to Mr. Fish, December 30, 1873.
2. Mr. Fish to Admiral Polo, January 9, 1874.
3. Admiral Polo to Mr. Fish, February 2, 1874.
4. Mr. Fish to Admiral Polo, April 18, 1874.

(For above inclosures, see Nos. 16, 17, 18, and 19.)

No. 25.

Mr. Cushing to Mr. Fish.

No. 7.] PARIS, *April 11, 1874.* (Received May 1.)

SIR: I have received the dispatch of the Department, touching a class of questions which render me exceedingly impatient to reach Madrid and have access in some form to the Spanish government.

I am preparing to leave Paris speedily, proceeding probably by way of Lisbon.

I have the honor, &c.,

C. CUSHING.

No. 26.

Mr. Cushing to Mr. Fish.

No. 9.] BORDEAUX, *April 20, 1874.* (Received May 7.)

SIR: My dispatch, No. 6, of the 10th instant, will have informed you of my conviction of the inexpediency of hastening to present myself to President Serrano, especially so long as he remains in his present position in the lines of Somorrostro.

* * * * * * *

I have come here for the purpose of taking passage this week for Lisbon in the regular packet of the English Pacific Steam Navigation Company, which affords me the only present convenient means of reaching Madrid.

I have the honor, &c.,

C. CUSHING.

No. 27.

Mr. Cushing to Mr. Fish.

No. 21.] LEGATION OF THE UNITED STATES,
Madrid, June 1, 1874. (Received June 22.)

SIR: I have the honor to report that my official presentation to the President of the executive power of the Spanish republic took place on Saturday, the 30th ultimo, according to the usual forms practiced in Spain.

I am, &c.,

C. CUSHING.

No. 28.

Mr. Cushing to Mr. Fish.

No. 41.] UNITED STATES LEGATION,
Madrid, June 26, 1874. (Received July 17.)

SIR: I have the honor to inclose herewith copy of communication addressed to the minister of state of Spain, presenting reclamation in behalf of the crew and passengers of the Virginius.

I am, &c.,

C. CUSHING.

[Inclosure in No. 41.]

Mr. Cushing to Mr. Ulloa.

LEGATION OF THE UNITED STATES,
Madrid, June 26, 1874.

SIR: I have been directed by the President of the United States to address your excellency, calling for reparation on behalf of the crew and passengers of the Virginius.

The protocol of conference between the Secretary of State of the United States and the Spanish minister at Washington, on the 29th of November last, which disposed provisionally of the question of the Virginius, was based on previous discussions of

the 21st, 25th, and 27th of November, communicated of course by the Spanish minister to his government. By the tenor of these conferences it appears that the United States, in their own interest, as well as in the interest of all maritime powers, deny the right of any other power to capture or molest on the high seas, in time of peace, any regularly documented vessel bearing as such their flag, and reserve to themselves the right to inquire whether, by reason of any act of such vessel, she shall have ceased to be entitled to the protection of the United States.

It was in obedience to this doctrine of public law that Spain, by the protocol above mentioned, agreed to restore the Virginius and the survivors of her passengers and crew forthwith, leaving it open to Spain to prove to the satisfaction of the Government of the United States, if she could, that the Virginius was not entitled to carry the flag of the United States.

This admission of the illegality of the capture of the ship involved, of necessity, not only admission of the illegality of the capture of her crew and her passengers, but admission also of the wrongfulness of the summary execution of fifty-three of her crew or passengers at Santiago de Cuba.

The wrongfulness of the general act of the local authorities of Cuba in this respect was not confined to such of the passengers and crew as were citizens of the United States; it applied to all other persons, of whatever nationality, captured on board the Virginius.

As to such of the persons as were citizens of the United States additional wrong was committed, that of subjecting them to imprisonment without communication, and that of trying and condemning them in violation, as to manner and form, of the stipulations of treaty between the United States and Spain.

The views of the Government of the United States in this respect have been explicitly set forth heretofore in communications to the government of Spain.

Although no special reference to this question appears in the protocol of the 29th of November, still it was not lost sight of at the time, and is among the questions contemplated by the stipulation of the protocol, in these words: "Other reciprocal reclamations to be the subject of consideration and arrangement between the two governments."

Spain has already availed herself of the right thus reserved by presenting reclamation for indemnity on account of alleged injuries done to her by the Virginius.

It now becomes my duty, in obedience to my instructions, and for the considerations thus adduced, to present to the government of Spain reclamation in behalf of the United States for injuries suffered by the surviving crew and passengers of the Virginius by reason of their capture and imprisonment, and indemnity for the families of such of the crew and passengers as were executed at Santiago de Cuba, and earnestly to press the same on the early attention of the government of Spain.

I avail myself of this opportunity to repeat to your excellency the assurance of my most distinguished consideration.

C. CUSHING.

No. 29.

Mr. Cushing to Mr. Fish.

No. 49.] UNITED STATES LEGATION,
Madrid, July 3, 1874. (Received July 23.)

SIR: I entertain confident belief that, with steady but patient persistence of reclamation, we shall in good time reach a satisfactory solution of most, if not all, of the unsettled questions growing out of the capture of the Virginius.

* * * * * * *

It may become expedient ere long to communicate personally with the minister of state on the whole subject, with doubt only whether or not it is best to wait for written responses from the minister of state, such as to require argumentative written reply on my part, or in anticipation thereof to provoke or invite oral discussion.

* * * * * * *

Meanwhile, if you have had occasion to reflect upon the reserved questions comprehended in the general reclamation, it will greatly relieve me to receive directions from you to guide me in this behalf, more

especially as those questions are somewhat new, and the presentation of them may imply commitment of the United States in respect of principles of reciprocal public right.

I have, &c.,

C. CUSHING.

No. 30.

Mr. Cushing to Mr. Fish.

No. 59.] UNITED STATES LEGATION,
Madrid, July 10, 1874. (Received Aug. 4.)

SIR: I inclose herewith a communication from the minister of state, in answer to my note demanding indemnity for the officers, crew, and passengers of the Virginius.

You will perceive that the main contention of Mr. Ulloa turns on the pretended necessity or propriety of discussing, as one question, the claims preferred by Spain and those preferred by the United States.

Mr. Ulloa proceeds, on these premises, to maintain that because the claims of Spain were presented before those of the United States, therefore the first should be settled before the second. Such a thesis would be untenable in litigation between private persons. * * *

Besides which, the claim of Spain has been exhaustively discussed in the dispatches interchanged between yourself and Admiral Polo de Bernabé, and it would be quite vain for Mr. Ulloa to think of making any profitable answer to your last note to Admiral Polo.

The entire theory of Mr. Ulloa's communication is manifestly untenable, because the claims of Spain involve questions entirely distinct from, and independent of, those of the United States.

* * * * * * *

I propose, therefore, as in conformity with my instructions, to prepare, as soon as possible, and present a full and complete reply to this communication of the minister of state.

I remain, &c., C. CUSHING.

[Inclosure in No. 59.—Translation.]

Mr. Ulloa to Mr. Cushing.

MINISTRY OF STATE, *Madrid, July 7, 1874.*

SIR: I have received your note of 26th ultimo, in which, being charged therewith by the President of the Republic of the United States, you are pleased to demand reparation with respect to the crew and passengers of the steamer Virginius.

Your note being principally based on the reservation stipulated in the protocol of the conference celebrated on the 29th of November last, between the representative of Spain in Washington and the Secretary of State, with respect to "other reciprocal reclamations" which were "the subject of consideration and arrangement between the two governments," there is no room for doubt as to the regularity (*procedencia*) of your action, as well because its postponement was authorized and agreed to in the aforesaid protocol, as because in the conferences nothing was directly said about it.

Pursuing in his turn a like path of right, Rear-Admiral Polo, in representation of Spain, demanded in due time proper reparation for the injuries caused in consequence of the expedition of the Virginius to the coasts of Cuba; and although he did in fact receive a polite answer from the Secretary of State, wherein the latter endeavored to refute the arguments set forth by our plenipotentiary in support of his reclamation, he has not yet received any to the argumentative and extensive reply which he addressed to him on the 2d of February of the present year.

In recalling this circumstance, I have no other object than to call your attention to the importance of this matter and the difficulties in the way of clearing it up, which are at once revealed in the prolonged controversy still pending between our representative in Washington and the illustrious Secretary of State, Mr. Hamilton Fish.

Recognizing now, and repeating, as I ought to, the perfect right of the Government of the United States to select and fix the moment for reclaiming the reparation to which your note alludes, you will permit me, nevertheless, to observe that Spain having already presented, for her part, claim for the reparation which she deems herself entitled to obtain from the Government of Washington, this simultaneousness of proceedings in which one and the same government appears as claimant and respondent at the same time and in the same matter, is not in conformity to sound juridical principles, nor can be in any way dependent upon them. The bringing of the facts to light, due unity in the modes of proof, and, in fine, the examination of whatever may be alleged either for or against—these cannot but suffer considerably from the interruption of unity of connection * in the discussion, without receiving in exchange any positive advantage.

It seems, therefore, preferable in the present case, that before one of the governments deduces its right to be indemnified by the other, there should be previous ventilation of the fundamental question, from whence alone that right can spring.

So, therefore, the Spanish government would see with satisfaction, in deference to the respective interests of both governments, and in the interest of the justice which may be on the side of each of them in these reclamations—

First. That, before all, it be made clear through the diplomatic channel which of the two governments has been prejudiced by the acts of the Virginius, and the degree of responsibility which pertains to the other for the injuries caused by the conduct of its subjects.

Second. That after the question shall have been sufficiently discussed between the two governments or their diplomatic representatives, each of them may consult, should it so deem proper, such administrative or judicial bodies as it may consider expedient for the most complete enlightenment of the matter.

Third. That preliminary examination of the question having been already initiated before the Government of Washington, by the minister plenipotentiary of Spain, the termination of the same be awaited before the United States formulate their reclamation against the Spanish government; it being understood that the preference conceded to Spain is to be considered as the result of a fortuitous act, springing solely from the priority of the date when Rear-Admiral Polo presented his reclamation in the name of Spain.

As you will observe, this is the only possible means of bringing matters about so that the final determination reached in this grave affair may be the result of the rectitude and good judgment with which we all desire to proceed.

As for the rest, it is incumbent on me to give you the assurance that the question being once made clear, and the responsibility which may fall upon it for the events of the Virginius, the Spanish government will employ the same diligence as it is obliged, meanwhile, to consecrate to the defense of its national interests, in fulfilling and satisfying whatever may be exacted of it by the responsibility which shall appear to have been contracted by it or by its delegates in the island of Cuba.

I improve this opportunity to repeat to you the assurances of my distinguished consideration.

AUGUSTO ULLOA.

No. 31.

Mr. Cushing to Mr. Fish.

No. 64.] UNITED STATES LEGATION,
Madrid, July 22, 1874. (Received August 18.)

SIR: I inclose herewith copy of note to the minister of state on the subject of the officers, crew, and passengers of the Virginius.

I have, &c.,

C. CUSHING.

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* *Continencia*, a Spanish legal term, to express continued and connected unity in the conduct of a case, wherein judge, parties, and advocates are the same to the end.

[Inclosure in No. 64.]

Mr. Cushing to Mr. Ulloa.

LEGATION OF THE UNITED STATES OF AMERICA,
Madrid, July 21, 1874.

SIR: I have the honor to acknowledge reception of your excellency's note of the 7th instant, in reference to the reparation claimed by the United States in behalf of the crew and passengers of the steamer Virginius; and, after according to the matter such due reflection as its importance requires and as respect for your excellency dictates, I beg leave herewith to present the view of the general question entertained by my Government.

Your excellency, adducing the fact that the Spanish government, through its minister at Washington, Admiral Polo de Bernabé, had presented reclamations against the United States on account of the acts of the Virginius, and assuming that the discussion initiated at Washington is still pending, founds upon these premises three suggestions, namely:

1. That, in the first instance, there should be elucidation by diplomatic means as to which of the two governments had been prejudiced by the acts of the Virginius, and the degree of responsibility which belongs to the other in the damages caused by its subjects.

2. That, after the question shall have been sufficiently debated between the two governments or their diplomatic representatives, each one should consult, if it thinks fit, such bodies, whether of administrative or of judicial order, as it shall deem convenient for the more complete illustration of the subject.

3. That, the previous examination of the question having been initiated before the Government at Washington by the minister plenipotentiary of Spain, the termination of that subject shall be awaited before the presentation by the United States of their reclamation to the Spanish government.

As to the second of these suggestions, it may suffice to state that no body, administrative or judicial, exists in the United States which could be consulted by the President in the view of obtaining more complete illustration of the merits of the question or questions now pending between the two governments in regard to the acts of the Virginius or the acts of Spanish officers at Santiago de Cuba in or subsequent to her capture. It is not for me to presume to say what means the Spanish government may have of such consultation with domestic administrative or judicial bodies for its further information in the premises. Of the means or expediency of any such consultation on its part the Spanish government is, of course, the proper and sole judge. The Government of the United States, at any rate, does not possess, in this respect, any means of judicial recourse, or of administrative consultation, or, indeed, any pertinent means of action, other than diplomatic discussion with the government of Spain.

As to the first and third of the suggestions made by your excellency, the reply is obvious, to wit, that, on the 18th of April last, Mr. Fish addressed a note to Admiral Polo de Bernabé, which, it would seem, cannot have been brought to the attention of your excellency. That note replies in full to Admiral Polo's note of the 2d of February, discussing amply all the grounds or arguments of claim submitted by him, and constitutes, as it is confidently believed and assumed, a complete answer to and rejection of the indefinite reclamations preferred by him on account of any acts of the Virginius.

Hence I am unable to perceive the profitableness of any further discussion in that direction, which could of necessity admit only of iteration and repetition of previous facts and arguments, without beneficial result to either government, unless that of Spain should now be prepared to enter into consideration of the ulterior remedy stipulated in the protocol of the 29th of November last.

Furthermore, as the discussion initiated by Admiral Polo at Washington has, in fact, reached its conclusion, and as the Government of the United States has, as it conceives, made conclusive defense to the claims thus presented by the Spanish government on account of the acts of the Virginius, there ceases to be any possible complication of argument between the claims of Spain in that respect and the claims of the United States on account of the acts of Spanish officers at Santiago de Cuba.

True it is, as your excellency suggests, that counter claims exist in the premises—that is to say, claims of Spain against the United States on one account, and claims of the United States against Spain on another account. But as *discussion*, the discussion of the claims of Spain against the United States has been exhausted, although not her means of action under the protocol. And thus, notwithstanding the existence of counter claims, nothing, it seems to me, remains for discussion in this behalf except the claims of the United States against Spain.

Independently of all which, and in a broader view of the whole matter, I respectfully submit that there is no essential or logical connection between the respective claims of the two governments, other than in the purely incidental and immaterial fact of the relation of each to the Virginius.

The respective claims stand on different facts; they are referable to different reasons of public law and of right; they comprehend different subjects; and any decision upon either claim, howsoever reached, whether by common accord or by arbitration, would of necessity be wholly independent of any decision upon the other in so far as regards the considerations on which it might be founded and justified. In such circumstances there may be offset of *results*, but there cannot be any offset of *arguments* or legal considerations.

Coming, then, to the present reclamation of the United States, permit me to observe, in the first place, that any question of the character of the Virginius, of her previous history, or of the rightfulness of her capture, is wholly irrelevant to the present issue.

If, indeed, the illegality of her capture by the Tornado were an open question, I conceive that it would be easy to establish the following points, namely:

1. The Virginius could not be deemed a pirate, nor her expedition a piratical one, by any possible construction of the law of nations.

2. The Virginius was not a cruiser. She never made or attempted to make captures. At most, even as alleged by the Spanish government, she was but a merchant vessel, having contraband intention unexecuted, and, as *prima facie* an American bottom, she was not subject to capture by Spain on the high seas.

3. No municipal law of Spain could operate to impart legality to capture on the high seas; such authority could only be derived from the law of nations or convention, and in the present case it cannot be found in either.

4. The Spanish government itself, at the instance of the United States, had expressly waived all pretension of any such right of capture on the high seas in the modification made by Captain-General Caballero de Rodas on the 18th of July, 1869, of the tenor of his decree of the 7th of the same month, repealing the previous decree of Captain-General Dulce.

These and other pertinent suggestions might be made, I repeat, if the question were an open one; which, however, it is not, it having been explicitly determined by the protocol of November.

Unlawful, therefore, as was the capture of the Virginius, prejudicial as this capture was to the maritime rights of all nations of either hemisphere, injurious as it would have been, in the long run, to the interests of Spain herself to have any such pretended right of capture interpolated into the law of nations—nevertheless, and all these premises being admitted, and whilst the mere capture itself would have constituted serious cause of complaint, still, if the Spanish authorities in Cuba had subsequently pursued the course indicated by international law and by the universal practice of nations, that is to say, if they had taken the vessel into port for examination, and for possible trial before a court of admiralty, simply detaining uninjured her crew and passengers meanwhile, in such circumstances the injury done to the United States, although seriously justifying demand of redress, would not have assumed the portentous proportions which it actually did in consequence of the wholesale massacre of her officers, crew, and passengers, perpetrated at Santiago, which shocked the public sense of Europe as well as of America.

It is of these incidents which it is my duty now regretfully to speak, and to characterize them as they deserve, in the name of international law, of humanity, and civilization, by aid of the lights furnished by Spain herself as well as by other governments.

For it was the great fact of the inhuman slaughter in cold blood at Santiago de Cuba of fifty-three human beings, a large number of them citizens of the United States, defenseless persons, shot without lawful trial according either to the law of nations or to treaty, shot without any valid pretension of authority in the laws of Spain herself, and to the horror of the whole civilized world—this it was which produced such intense emotion in the United States, and which placed the two nations in imminent peril of war, so happily averted by the superior wisdom and patriotic discretion of the governments of Spain and the United States.

Your excellency will pardon me for repeating that this act has no conceivable justification, either in the law of nations or in the municipal law of Spain, or in any conventional law; it being, on the contrary, in plain violation of treaty with the United States.

It was a dreadful, a savage act.

Your excellency, I feel sure, cannot condemn this language as too strong for the actual circumstances. For is it not the very language constantly applied at this day, in public documents and debates, to other acts of the same class, and especially to the shooting of defenseless prisoners? Is it not the mere echo of the cry of indignation and of horror which comes up from all Europe, in view of the military execution of twenty-three prisoners at Estella by Dorregary—the lamentable voice, as it were, of the outraged conscience of Christendom—and which still rings in our ears?

Nay, does not the fact of the unjust military execution of a single German subject at Estella inspire all Germany with indignation? And can the United States be silent in face of the equally unjust military execution of many of her citizens at Santiago de Cuba?

Pardon me for thus alluding to incidents of civil war in this country, which, however, have ceased to be domestic incidents, and belong now to the general history of our times, and which, strikingly in contrast as they are with the conduct of the armies of the republic, may not improperly be alluded to here, in view of their manifest pertinence, and at the same time in the spirit of perfect deference for the government of Spain.

Indeed it affords me gratification to witness and to honor the expressed determination on the part of the Spanish government, and of its generals in the field, never to lose sight of the sacred rights of humanity, even in the presence of the worst excesses of pitiless war, and in the face of whatsoever provocation.

But that which is wrong at Estella cannot be right at Santiago de Cuba.

I will not cease to believe, therefore, that the government of Spain, manifesting as it does thus conspicuously its utter condemnation of such heinous acts, and providing indemnity for the families of the victims thereof, will in the same spirit of exalted self-respect be prepared to do justice to the present reclamations of the United States.

With which I have the honor to renew to your excellency the assurance of my highest consideration.

C. CUSHING.

No. 32.

Mr. Fish to Mr. Cushing.

No. 59.] DEPARTMENT OF STATE,
Washington, August 21, 1874.

SIR: Your dispatch, No. 41, inclosing a copy of your note to Mr. Ulloa presenting the reclamation on behalf of the officers, crew, and passengers of the Virginius, was received upon the 17th of July. Upon a careful reading of this note to the minister of foreign affairs, it appeared to place the reclamation, even in the case of those who had been executed, principally, if not entirely, on the ground that the capture of the vessel was illegal. While it may be said that the capture being illegal, reparation must follow for all the subsequent acts, including the executions, at the same time it seemed that great stress might be laid upon the fact, at least so far as American citizens were affected, that such bloody deeds as were enacted at Santiago were contrary to the usages of civilized nations, in violation of treaty obligations, without parallel, and entirely without excuse, and demanded full and complete reparation, entirely apart from the question of the illegality of the capture of the vessel. Nothing was said, however, on this point, as every confidence was felt that in the further presentation of the case, in your own way, you would completely and forcibly represent the whole case in conformity with the views and on the grounds orally discussed between us before your departure on your mission, and in such form as to make it most effective in its operation upon the Spanish government, and in the estimation of this Department.

Your dispatch No. 59 was also received, inclosing a copy of Mr. Ulloa's note in reply to your demand.

The Department is now in receipt of your No. 64, inclosing a copy of your reply to the minister of state. Your reply has been read with care and lively satisfaction.

Your presentation of the case, and the light in which you have placed it, meet with the entire approval of this Department.

It is most disappointing and unsatisfactory to learn, after the presentation of the claim for reclamation had been delayed many months, when ample time had been given for every investigation which could be required, when an opportunity had arisen for the government of Spain to meet the question freed from the excitement which surrounded the acts

which were complained of, when even the Spanish government had become loud in its expressions of horror at the execution of defenseless prisoners, in cold blood and without trial, that the answer submitted to your demand for redress for the occurrences at Santiago should be simply a plea for delay.

You will, on proper occasion, express to the government of Spain the strong feeling of this Government, that the questions so fully presented by you should be considered without delay, and that ample reparation, now too long deferred, should be promptly furnished.

This Department awaits with interest your further communication on this question.

* * * * * * *

I am, &c.,

HAMILTON FISH.

No. 33.

Mr. Cushing to Mr. Fish.

No. 91.] LEGATION OF THE UNITED STATES,
Madrid, August 31, 1874. (Received September 28.)

SIR: I transmit herewith copy of the original, with translation, of a note from the minister of state, in rejoinder to my second communication to him in the matter of the Virginius.

You will perceive, on reading this note, that, long as it is, it absolutely abstains from contesting any of the positions of my communication, and is wholly confined to the task of assigning reasons to justify the reference of the questions involved to the council of state.

For that is the consultative body to which Mr. Ulloa alludes as the one whose opinion on the question is desired by the executive.

The council of state (*consejo de estado*) is composed of the ministers, and of a considerable number of other persons aggregated to them, for the purpose of examining and advising in the solution of administrative questions of transcendent magnitude.

Thus, on a recent occasion, the great controversy between the minister of hacienda and the British holders of Spanish bonds, was referred for solution to the council of state; and such reference is common in other questions of similar importance.

* * * * * * *

I understand that, at or about the time of the date of Mr. Ulloa's note to me, he made verbal explanations, in the same sense, to representations which the British chargé d'affaires here had been instructed to present, in complaint of the delay of the Spanish government to satisfy the reclamations of the British government in behalf of the families of British subjects of the crew of the Virginius. I assumed in my note to Mr. Ulloa of July 21 that your communication to Admiral Polo de Bernabé of April 18 was to be regarded as a definite and final rejection of all reclamations made by the Spanish government against the United States on account of the Virginius; and I shall so continue to assume, unless otherwise advised by you.

* * * * * * *

Is it desirable that, in conversation with Mr. Ulloa, I should explicitly call his attention to this point in the present stage of the discussion,

or shall I wait, in that respect, until the opposite reclamation of the United States shall have been favorably answered by the Spanish government, or answered unfavorably, so as to raise the question of arbitration as the ultimate means of redress for the United States?

* * * * * * *

I have, &c.,

C. CUSHING.

[Inclosure in No. 91.—Translation.]

Señor Ulloa to Mr. Cushing.

MINISTRY OF STATE,
Madrid, August 14, 1874.

SIR: On the 1st instant the note of the 21st ultimo reached me, in which you are pleased to examine the reasons I had the honor to lay before you in my note of the 7th of July last, and which prevented the Spanish government from giving an immediate solution, as it would have desired, to the reclamation initiated by the Government of Washington in regard to the capture of the steamer Virginius.

When I addressed to you the note to which I refer, there was no information in this ministry of the reply which, on the 18th of April, the honorable Secretary of State, Mr. Hamilton Fish, had given, and the argumentative answer of the minister of Spain in Washington, of date 2d of February, and only some days afterward did a printed copy reach my hands of so important and extensive a document, transmitted by Rear-Admiral Polo, shortly before leaving that country.

This circumstance will satisfactorily explain to you that I could not take into consideration the communication of Mr. Fish in my note of the 7th ult., and that I should at that time have considered unanswered the reply of our representative at Washington.

But even after having notice of the reply of the honorable Secretary of State, it is impossible for me to concur in your enlightened opinion, according to which, the ample and complete answer of Mr. Fish being once understood, the profitableness of any further discussion is not perceived by you, which, in your opinion, would necessarily constitute but a reiteration of facts and arguments, without beneficial result to either of the two governments.

In regard to the first point, you will permit me to say to you, that without ceasing to render the most complete justice to the eminent endowments which distinguish the worthy Secretary of State of the United States, and to his superior enlightenment, demonstrated once more in the discreet communication of the 18th of April last, nevertheless, the Spanish government cannot consider it as a conclusive and victorious refutation, so as to put an end to the existing debate in which we are occupied.

And in regard to the second point, I beg you to observe that, precisely in order to avoid the inconveniences involved in the retortion of arguments, the persistence in appreciations, and the repetition of facts already alleged by both parties, and which would render this discussion interminable, the Spanish government has believed that the most legal, the most practical, and the shortest method was to recur to the high consultative bodies of the nation, that they may enlighten it with an authoritative decision, having before them all the antecedents, and even the very reply of April 18, which can throw much light on the question by its detailed reasonings, its extensive details, and the copiousness of data with which it abounds.

If, as you are pleased to manifest, in the administrative institutions of the United States there do not exist corporations analogous to ours, with which to consult in certain matters, such exception cannot exempt us in Spain from the right, and even the duty, of seeking such security of sound action in those decisions which are of considerable intrinsic importance, and which involve great responsibility for the executive power. And if this guarantee is indispensable, and cannot be refused in ordinary circumstances, to those intrusted with the administration of the country, you will agree that, with greater reason, the government which at present rules the destinies of Spain should protect itself with it, and invest its acts with such respectable sanction, seeing that at the present time the government cannot fortify its own judgment, in the solution of matters like that of the Virginius, with the opinion of the Cortes.

The Spanish government does not conceive that the course which it thus proposes to follow can be interpreted in any quarter as an expedient to postpone the principal question, or to elude the responsibility of its acts. Such a purpose could not be entertained, either under the point of view of self-estimation, or under the point of view of its interests pledged, to-day more than ever, in that the solution, whatever it may be,

of this affair, should be presented to the eyes of all, invested with the prestige of justice, of impartiality, and of the purest good faith.

If, in the reclamations in consequence of the capture of the Virginius, the only object were to repair as much as possible the damage done to certain individuals, or to equitably indemnify the innocent who suffers the consequences of an act in which he took no part, and which was carried out by one who should have provided for his support or sheltered his old age, the legitimate impatience which the hope of finding a truce to his misery excites in such destitute person could be justified; and then the government would not remain indifferent before an unmerited misfortune.

But when this aspect of the question appears as secondary beside other rights and other interests which are claimed and invoked, the Spanish government considers it to be its duty to elucidate these with the care they merit, in the assurance that the relative delay which this examination may produce will be highly beneficial to the most scrupulous exposition of the truth of the facts and of the severe application of the principles of justice, the only object the attainment of which is proposed by either government.

I improve this opportunity to reiterate to you the assurances of my most distinguished consideration.

AUGUSTO ULLOA.

The MINISTER PLENIPOTENTIARY
Of the United States.

No. 34.

Mr. Fish to Mr. Cushing.

No. 80.] DEPARTMENT OF STATE,
Washington, October 27, 1874.

SIR: Referring to your dispatch No. 91, transmitting a copy of the rejoinder of Mr. Ulloa, the minister of state, to your second communication in the matter of the Virginius, and to your comments thereon, I have to say that the course to be adopted has been carefully considered in the light of the facts presented by you. * * *

Mr. Ulloa, as you state, refrains from further discussion of the questions involved, and contents himself with assigning reasons why it is proper to refer the matter under discussion to the council of state, and had, as you further state, made similar verbal representations to the British chargé d'affaires, who had been instructed to complain of the delay of the Spanish government in giving a decisive answer to the demand of Great Britain.

You state that you shall regard the communication of the Secretary of State to Admiral Polo de Bernabé, of the 18th of April, as a definite and final rejection of the claims of the Spanish government, leaving it to that government to seek further redress, if at all, through the stipulation of the protocol of November 29, 1873, and ask whether you should explicitly call the attention of Mr. Ulloa to that point, or delay until a definite answer shall have been received to the reclamation on the part of the United States.

Concerning the reclamation of the Spanish government, * * * you may state that as the case now stands the demand of Spain has been rejected, and no probability exists of a change of decision on that question.

The reclamation of the Government of the United States stands upon different ground, and while being maintainable because the Virginius was illegally captured, is also maintainable upon the simpler and broader ground that no informality in the papers of the vessel, and no facts arising from her character or acts, could, under any circumstances, pal-

liate or excuse the wanton, wicked, and brutal assassination of defenseless men, who had unfortunately fallen into the hands of the military authorities in Cuba.

The rejoinder of the minister of state is a plea for delay.

It is doubtless competent for the government of Spain to take such advice and counsel as it may desire, but this is a domestic question in which this Government can in no way participate.

The Government of the United States, satisfied of the justness of its reclamation, presents it with no doubt or hesitation. We require no reference to assure us of the propriety and justness of our demand.

If it be necessary to say anything on this point, you will inform the minister for foreign affairs that it is not the intention of this Government to take any part whatever in the means by which the government of Spain may reach a conclusion, but that we insist that such conclusion should be speedily arrived at, and this vexatious and dangerous question be once for all adjusted.

* * * * * * *

You are therefore instructed to press the reclamation of the United States upon the government of Spain firmly and plainly, and to represent that the delay in according to this Government what has been too long withheld is deemed a serious menace to the continued good relations of the two countries.

I am, &c.,

HAMILTON FISH.

No. 35.

Mr. Fish to the President.

DEPARTMENT OF STATE,
Washington, November 20, 1874.

SIR: I have the honor to lay before you a copy of a correspondence between the British chargé d'affaires at Madrid and the Spanish minister of foreign affairs in relation to the indemnity claimed by Great Britain for British subjects who were captured on board the Virginius and were slain at Santiago de Cuba.

This correspondence comes into my possession confidentially, but through a well-informed and trustworthy channel, and may be relied upon as substantially, although probably not a literally, accurate translation of the originals.

I shall transmit a copy to General Cushing for his information, as well as for the purpose of accurate verification of the text of the letters, if this be practicable.

I am very credibly assured, through other sources, that the payment of the sum promised to be paid to Great Britain in August last had not been made up to the 7th instant.

I have the honor to be your obedient servant,

HAMILTON FISH.

The PRESIDENT.

[Inclosure to No. 33.]

The chargé d'affaires of Great Britain to his excellency the minister of state.

MADRID, *August 5, 1874.*

SIR: Having communicated to the Earl of Derby the desire of your excellency that Her Majesty's government should, *for the moment, delay* agitation of the claims relat-

ing to the Virginius, I have received instructions from his excellency reminding that many months have already elapsed since the execution of the British subjects captured on board of the said steamer, and that the families of the persons executed have represented in several instances that they were in misery.

The last consideration, I am sure, will have weight in the mind of your excellency, as well as in that of the Spanish government.

Her Majesty's government has instructed me to represent that however much it does not desire to augment the difficulties of the Spanish government, yet it cannot permit that these claims should be postponed indefinitely, and therefore trusts that your excellency will have the goodness to give me a decisive promise that this matter will be arranged at a specified date, and not a very distant one.

I beg your excellency to receive, &c.

H. G. MACDONELL.

The minister of state to the chargé d'affaires of Great Britain.

MADRID, *August 14, 1874.*

DEAR SIR: I have received the note of your lordship, dated 5th instant, in which, by instruction of Lord Derby, your lordship has the goodness to represent to me that, many months having elapsed since the deplorable event of the Virginius, the families of the British subjects captured on board of her, and executed at Santiago de Cuba, had reiterated their solicitations to Her Majesty's government, in order to obtain some indemnity that should alleviate their misfortunes.

The British government is not ignorant of the motives which have until now obliged the government of Spain not to refuse but to postpone the arrangement of the respective indemnity to the British subjects; but, as your lordship very justly supposes in your note, the consideration of the miserable state in which the families of those unfortunates are placed can have no less weight in the mind of the Spanish government, and will induce it to anticipate the time when the above-mentioned families shall receive, in a formal and definite manner, some amount of money.

To this end the executive power of the Spanish republic will, without prejudging the foundation of this matter, have no objection to give timely orders that an amount be forwarded for distribution among the families of the British subjects captured on board the Virginius, and executed at Santiago de Cuba, reserving to itself the option of sending as much as necessary until the total amount of the indemnity, to be agreed upon by both governments, is completed, when the principal question shall have been settled in this manner.

Your lordship can, if you think it convenient, inform the government of Her Britannic Majesty of this proposition, which has been inspired by the best desire not to delay the sending of assistance to those interested, without, however, precipitating the official course indispensable for proper settlement of the question which is before us.

I avail myself, &c.

AUGUSTO ULLOA.

The chargé d'affaires of Great Britain to his excellency the minister of state.

MADRID, *August 15, 1874.*

SIR: I have to thank your excellency for the prompt reply which you have kindly made to the communication I had the honor to address you at date of 5th instant, and in consequence of which I hasten to inform your excellency that I have been authorized by the government of Her Britannic Majesty to accept the amount deemed just as indemnity to the British subjects captured on board the Virginius, and subsequently executed in Havana.

Being in accord upon this point, I have the honor to inform your excellency of the total amount of the claim made by the government of Her Britannic Majesty in favor of those injured by that event.

The number of individuals executed amounts to nineteen, among whom were nine colored and ten white men. For each of the colored men Her Britannic Majesty's government claims three hundred pounds, (£300,) and for each of the white men five hundred pounds, (£500,) which makes a total of seven thousand seven hundred pounds, (£7,700,) it being understood that in case no relative of the victim presents himself to establish his claim, or should not prove his right within a reasonable time, that the amount paid in his favor to the government of Her Britannic Majesty shall be immediately refunded to the Spanish government.

In submitting the foregoing figures to the consideration of your excellency, I have no doubt of receiving a favorable reply, trusting that the Spanish government, guided by its elevated sentiments of justice, will be in accord with the government of Her Britannic Majesty, and consider as just and equitable the amount fixed as indemnity.

I avail myself, &c.,

H. G. MACDONELL.

The minister of state to the chargé d'affaires of Great Britain.

MADRID, *August 18, 1874.*

DEAR SIR: I have received the note of your lordship, dated 15th instant, by which you have the goodness to inform me, in reply to that I had the honor to address you on the 14th instant, that your lordship is authorized by the government of Her Britannic Majesty to accept the proposition presented by me in the name of the executive power; a proposition to furnish the sum agreed upon by both governments, in order that the same be, in the nature of an advance, distributed among the families of the British subjects captured on board the Virginius and executed at Santiago de Cuba. Your lordship adds, in the note to which I have the honor of replying, that the number of these unfortunates amount to nineteen, of whom ten are white men, and the remaining nine colored, the government of Great Britain deeming it fit to fix the indemnity at the amount of five hundred pounds (£500) for each of the individuals of the white race, and at three hundred pounds (£300) for each of the colored, resulting in a sum total of seven thousand seven hundred pounds, (£7,700,) which the Spanish government is to furnish for the object agreed upon.

The executive power consents on its part to the amount fixed, and will give timely orders through the minister of finance for the immediate transfer of six thousand seven hundred pounds (£6,700) in London, to be placed at the disposal of Her Britannic Majesty, being prepared to forward the remaining thousand pounds to make up the total amount of seven thousand seven hundred pounds (£7,700) when the subject shall have been definitely terminated, in accordance with the proposition of my note of the 14th instant, the government of Great Britain, on its part, agreeing to refund to the Spanish government the portion or portions of those individuals, respectively, whose relatives should present no claim, or not clearly establish their right to receive the indemnity within a reasonable time.

I avail myself, &c.,

AUGUSTO ULLOA,
The Minister of State.

No. 36.

The exact text of the above correspondence, and the other correspondence at the time on this question, appears in British Parliamentary Papers, Spain, No. 1, (1875,) as follows:

No. 1.

The Earl of Derby to Mr. Macdonell.

FOREIGN OFFICE, *August 13, 1874.*

SIR: On the 10th instant I received from you a telegram informing me that the Spanish government had forwarded to you a project of a note, expressing their willingness to pay, as an advance, such sum as might be claimed by Her Majesty's government for the relief of the families of the British subjects taken on board the Virginius and executed at Santiago de Cuba; but that while the American claims are still pending, the Spanish government do not wish to admit the principle involved in the matter.

I have now to instruct you to state to the Spanish minister for foreign affairs that Her Majesty's government accept the arrangement proposed by his excellency, and you will add that Her Majesty's government consider the following would be a fair amount for the Spanish government to pay:

To the family of each colored man, of whom there were nine, £300, making £2,700.
To the family of each white man, of whom there were ten, £500, making £5,000.
Total, £7,700.

You will also state, that in any case where no near relations of one of the persons executed come forward to make a claim, or in case any alleged relatives fail to prove their claim within a reasonable time, the money paid on account of such claim shall be repaid to the Spanish government.

The substance of the above instructions has already been sent to you by telegraph.

I inclose, for your information, a copy of a memorandum, showing the names of the British subjects in question, and the information regarding each of them in possession of this office.

I am, &c.,

DERBY.

No. 2.

Mr. Macdonell to the Earl of Derby.—(Received August 23.)

[Extract.]

MADRID, *August 19, 1874.*

In accordance with your lordship's instructions, I addressed a note to the minister of foreign affairs, copy of which I have the honor to inclose, informing his excellency that Her Majesty's government could admit of no further delay in the settlement of the claims arising out of the capture and subsequent execution of the British subjects on board of the Virginius.

In delivering the above note to Señor Ulloa, I expressed the hope that he would consult with his colleagues as to the best mode of settling this question, which, under the circumstances specified in my note, admitted of no further postponement.

Señor Ulloa again assured me that the Spanish government were most desirous to see this affair brought to a close, so far as Her Majesty's government were concerned, but that unfortunately it was not in the power of the Spanish government to act as promptly as your lordship desired; that, owing to the United States Government having also an interest in this matter, the Spanish government would find itself in an embarrassing position, were it to establish a precedent by favoring the English claimants; but the different claims and counter-claims between the United States and Spain were now under consideration, and that if Her Majesty's government would be good enough to postpone the settlement of their claims for a short time longer, he could give me the positive assurance that as soon as the council of state re-assembled (at the end of September) the payment of the indemnity would immediately be effected.

I expressed great regret at not being able to comply with his excellency's request; that your lordship's instructions on the subject were definite, and that all I could do was to submit to your lordship's favorable consideration any reasonable suggestion his excellency might make; but that steps must be taken to satisfy the just demands of the families of the sufferers.

After some discussion, I agreed to submit to your lordship the proposal, which Her Majesty's government have since accepted, and the acceptance of which I have notified to the Spanish government, viz, that a certain sum should be paid, under the name of an advance, for the relief of the families of the victims, without prejudice to the principle involved; and I availed myself of that occasion to acquaint Señor Ulloa with the amount of the indemnity claimed.

On calling upon the minister the following day, his excellency said that he considered the sum demanded by Her Majesty's government very large, and far more considerable than he had been led to anticipate.

I pointed out that it was far below the estimate of the Spanish government, as applied to the families of those who fell at the hands of the Carlists.

However, I thought I might venture to make the following arrangement, which has since been accepted by the Spanish government, viz, that the sum of £1,000, by which the Spanish government seem desirous of reducing the claim, should be held by them as the balance to be paid on the final settlement of this question; by this means Her Majesty's government will eventually receive payment in full of the total amount claimed.

Accordingly, Señor Ulloa has now addressed to me a note, informing me that orders have been given to the ministry of finance for the immediate payment to Her Majesty's government in London of the sum of £6,700, it being clearly understood that the balance of £1,000 shall be paid when the question of the Virginius claims shall have been definitely settled by the council of state.

In submitting the above arrangement to your lordship, I trust that your lordship will not be of opinion that I have gone too far in assuming the responsibility of accepting the modifications proposed by the Spanish government.

[Inclosure 1 in No. 2.]

Mr. Macdonell to Señor Ulloa.

MADRID, *August 5, 1874.*

M. LE MINISTRE: Having reported to the Earl of Derby your excellency's desire that Her Majesty's government might defer for the present pressing for a settlement of the Virginius claims, I am instructed by his lordship to remind your excellency that many months have now elapsed since the execution of the British subjects taken on board the Virginius, and that in several instances the families of the persons executed are in distress. The latter consideration will, I am convinced, have full weight with your excellency, as well as with the Spanish government.

Her Majesty's government have desired me to add that, though they are most unwilling to add to the difficulties of the Spanish government, yet they cannot allow these claims to be postponed indefinitely, and I trust, therefore, that your excellency will be able to give me a decided promise that the matter shall be settled by a fixed and not too distant date.

I avail, &c.,

H. G. MACDONELL.

[Inclosure 2 in No. 2.]

Señor Ulloa to Mr. Macdonell.

[Translation.]

MADRID, *August 14, 1874.*

SIR: I have received your note of the 5th instant, in which, by instructions from Lord Derby, you state to me that many months having elapsed since the occurrence of the sad events connected with the Virginius, the families of the English persons captured on board of her and executed at Santiago de Cuba renew their requests to Her Majesty's government to obtain some indemnity for the relief of their misfortune.

The British government is aware of the reasons which have, up to this time, obliged the Spanish government not to refuse to arrange, but to put off the arrangement of this indemnity with regard to the British subjects, but, as you very justly suppose in your note, the consideration of the present miserable state of the families of those unfortunate persons cannot but have an influence on the Spanish government and move them not to wait for the moment when, in a definitive and formal manner, the said families may receive some sum of money.

To that end, the executive power of the Spanish republic, without prejudging the essence of this matter, will have no objection to give orders for handing over a sum of money for distribution among the families of the British subjects captured on board the Virginius and executed at Santiago de Cuba, reserving the delivery of what may be necessary for the completion of the whole amount of the indemnity that may be agreed upon between the two governments when the principal question may have been definitely settled in that sense.

You can, if you think fit, bring this proposal to the knowledge of Her Britannic Majesty's government, inspired as it is by the strongest wish not to delay the sending of succor to the parties interested, without precipitating the official course indispensable for coming to a right decision in the present question.

I avail, &c.,

A. ULLOA.

[Inclosure 3 in No. 2.]

Mr. Macdonell to Señor Ulloa.

MADRID, *August 15, 1874.*

M. LE MINISTRE: I beg to thank your excellency for the ready acknowledgment of the communication I had the honor to address to you on the 5th instant, and I hasten to inform your excellency in reply that I have been authorized by Her Majesty's government to accept an advance on the sum which they deem due, as compensation, to the families of the British subjects captured on board the Virginius and subsequently shot at Santiago de Cuba.

This point having been settled, it now becomes my duty to acquaint your excellency with the total amount claimed by Her Majesty's government on behalf of those who suffered on that occasion. The individuals executed numbered nineteen, of whom nine were men of color, and ten were white men. For the colored men Her Majesty's gov-

ernment claim £300 sterling each, and for the white men £500 sterling each; which constitutes a total of £7,700 sterling, it being clearly understood that in the event of no near relative of these men coming forward to establish a claim, or failing to substantiate it, within a reasonable period, the amount paid to Her Majesty's government on behalf of such individual or individuals shall be forthwith restituted to the Spanish government.

In submitting the above figures to your excellency, I have no hesitation in looking forward to a favorable reply, confident that the Spanish government, guided by their high sense of justice, will readily agree with the government of Her Majesty in considering the amount of compensation claimed both fair and equitable.

I avail, &c.,

H. G. MACDONELL.

[Inclosure 4 in No. 2.—Translation.]

Señor Ulloa to Mr. Macdonell.

MADRID, *August 18, 1874.*

SIR: I have received your note of the 15th instant, in which you state to me, in answer to the note which I had the honor of addressing to you on the 14th, that you are authorized by Her Britannic Majesty's government to accept the proposal made by me in the name of the executive power, to give the sum to which both governments might agree, for distribution, in the light of an advance, among the families of the British subjects taken on board the Virginius and executed at Santiago de Cuba.

You add, in the note to which I have the honor to reply, that as there were nineteen of those unfortunate persons, of whom ten were white men, and the other nine were men of color; and as the British government think that they ought to fix, as the rate of indemnity, the sum of £500 sterling for each white man, and £300 for each man of color, the sum total would amount to £7,700, to be given by the Spanish government for the purpose agreed upon.

The executive power of the nation agree, on their side, to the sum fixed, and will give the necessary orders, through the ministry of finance, so that £6,700 may be at once placed in London at the disposal of Her Britannic Majesty's government and the remaining £1,000, wanting for the completion of the whole sum of £7,700, will be handed over when this matter shall be definitely settled, according to that which is proposed in my note of 14th instant; the British government promising, in their turn, to re-imburse to the Spanish Government the sum or sums corresponding to those individuals whose relations may make no claim, or may not fully prove, within a reasonable time, their right to receive the indemnity.

I avail &c.

A. ULLOA.

No. 3.

The Earl of Derby to Mr. Macdonell.

FOREIGN OFFICE, *September 7, 1874.*

SIR: I have received your dispatch of the 19th instant, inclosing copies of a correspondence with the Spanish minister for foreign affairs, from which it appears that orders have been given for the immediate payment to Her Majesty's government of £6,700, as compensation to the relatives of the British subjects taken on board the Virginius and executed at Santiago, and that a further sum of £1,000 will be paid when the question has been definitely settled by the council of state.

I approve your proceedings in this matter, as reported in your above-mentioned dispatch, and I have to instruct you to express to Señor Ulloa the satisfaction with which Her Majesty's government have learned that their proposals for the settlement of the question have been accepted by the government of Spain.

I am, &c.,

DERBY.

No. 4.

Mr. Layard to the Earl of Derby.—(Received December 5.)

MADRID, *November 25, 1874.*

MY LORD: Señor Ulloa expressed the greatest surprise when I told him two days ago that the indemnities to the families of the British subjects taken on board the

Virginius and executed at Santiago had not been paid to your lordship. I could scarcely persuade him that such was the case. He said that he would go at once to the minister of finance and ask for an explanation. In the evening he informed me that he had seen his colleague on the subject, and that peremptory orders would be given on Wednesday (to-day) for the payment of the money without further delay. I trust, therefore, that your lordship will now have received it, or that M. de Comyn is prepared to hand it over to you.

I have, &c.,

A. H. LAYARD.

No. 5.

The Earl of Derby to Señor Comyn.

FOREIGN OFFICE, *December 10, 1874.*

M. LE MINISTRE: I have the honor to acquaint you that I have received a dispatch from Her Majesty's minister at Madrid, dated the 25th ultimo, reporting that he had been informed by Señor Ulloa, two days previously, that peremptory orders would at once be given for the payment to Her Majesty's government of the indemnities due to the relatives of the British subjects who were shot at Santiago de Cuba in November, 1873: and I now beg to request that you will have the goodness to inform me whether you have received any instructions from your government in the matter.

I have, &c.,

DERBY.

No. 6.

Señor Comyn to the Earl of Derby.—(Received December 16.)

[Translation.]

LONDON, *December 14, 1874.*

MY LORD: In conformity with the orders received from my government, I have the honor of inclosing herewith a check drawn with this day's date upon Messrs. Frederick Huth & Co., of this city, to the order of your excellency as principal secretary of state for foreign affairs, for the sum of £6,700 sterling, agreed upon for the settlement of the affair of the steamer Virginius.

I beg that your excellency will be pleased to acknowledge the receipt of the said sum.

I have, &c.,

JUAN S. COMYN.

No. 7.

The Earl of Derby to Señor Comyn.

FOREIGN OFFICE, *December 18, 1874.*

M. LE MINISTRE: I have the honor to acknowledge the receipt of your letter of the 14th instant, inclosing a check on Messrs. Huth & Co., of this city, to my order, for the sum of £6,700, on account of the claims of the families of the British subjects taken on board the Virginius and executed at Santiago de Cuba in November, 1873.

I have, &c.,

DERBY.

No. 8.

The Earl of Derby to Mr. Layard.

FOREIGN OFFICE, *December 19, 1874.*

SIR: I transmit to you herewith a copy of a note from the Spanish minister at this Court,* inclosing a check for £6,700, on account of the claims of the families of the British subjects executed at Santiago de Cuba, in November, 1873, for participation in the Virginius affair.

I also inclose a copy of the answer which I have returned to Señor Comyn.†

I am, &c.,

DERBY.

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*No. 6. †No. 7.

No. 37.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *November 25, 1874.*

FISH, *Secretary of State, Washington:*

In private note dated yesterday, minister of state, after complaining of unfairness and ill effects of article on Virginius question in the newspapers, says, in substance, that the Spanish government is disposed to concede to the United States indemnification in every respect similar in signification and limits to that granted to England, provided that stipulation be made, as has been done with England, respecting the character of this resolution, and that beforehand shall be determined the several points which, in the affair of the Virginius, establish for Spain, with respect to the United States, different rights from those which exist in this matter with regard to England, being such rights as are clearly derivable from the acts and declarations of the United States. Spain will abide in all events by all the stipulations in protocol, and, in the improbable event of not reaching a direct accommodation, will have recourse to the arbitration stipulated therein.

I telegraph, literally, the material parts of the note, which contains strong expressions of solicitude and purpose of Spanish government to establish most friendly relations with President Grant.

CUSHING.

No. 38.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *November 27, 1874.*

FISH, *Secretary of State, Washington:*

Interview with minister of state last night. He repeated and enlarged upon contents of private note. President decided in July to satisfy the claims of Great Britain and the United States. Delay in latter case produced by absence in the ministry of any official knowledge of its own of details in Cuba. Documents only received in last few days. Ministers of state and colonies diligently occupied now in preference to other matters in the preparation of propositions for submission to the United States. He doubts the possibility of consummating the negotiation in a week, but will spare no effort to hasten conclusion. On this and other considerations he prefers to continue the negotiation at Madrid. I feel confident of his sincerity and good faith for many reasons, but will promptly telegraph every suggestion or incident of possible information for the Department.

CUSHING.

No. 39.

Mr. Fish to Mr. Cushing.

[Telegram.]

WASHINGTON, *November 28, 1874.*

CUSHING, *Minister, Madrid:*

* * * * * * *

In settlement all of the crew not claimed by Great Britain, and for whom she did not receive indemnity, must be treated as American seamen. No less sum can be received for any than that paid England for white persons, namely, not less than twenty-five hundred dollars; captain, mate, engineers, purser, and doctor should be allowed more. Three of the passengers slain are supposed to have been American citizens, and must be allowed for same as others.

You will ask indemnity for detention and imprisonment and for losses sustained by those of the crew, and by passengers who are American citizens who were not executed. We understand the number of these to be fifteen of the crew, including two engineers and one assistant and four of the passengers, nineteen in all.

FISH.

No. 40.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *November 30, 1874.* (Received 12.30 p. m., Nov. 30.)

FISH, *Secretary of State, Washington:*

Instruction of twenty-eighth received, and will be punctually obeyed.

CUSHING.

No. 41.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *December 4, 1874.* (Received December 4.)

FISH, *Secretary of State, Washington:*

Long note received from Ulloa at twelve last night, which discusses the legal questions from his point of view, but concedes indemnity to the United States on the same basis as to Great Britain, and also trial of local authorities implicated. Telegram of details in preparation.

CUSHING.

No. 42.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *December 4, 1874.*

FISH, *Secretary of State, Washington:*

Mr. Ulloa argues, temperately and in direct response to my notes, two general questions: first, that of arrest on the high seas, and second that of the true character of the ship's company, on both points citing legal authorities, and in the latter quoting dispatches of Mr. Seward. He then proceeds substantially as follows:

I would have liked to convince you that the fundamental motive Spain has had to consider those on the Virginius as pirates is not so very absurd nor unreasonable, and that, supposing Spain erred in so regarding them, she would have been induced thereto by eminent writers and authorities.

The terrible consequences entailed on some of the unfortunates on board, and which the orders of the executive arrived in Santiago too late to avert—the lines being cut by insurgents—could not but move Spain, situated between strict fulfillment of laws in special circumstances and sentiments of pity common to all, but which latter should be stifled by duty, and in defense of high interests.

That duty fulfilled, humane sentiments may now seek not to remedy an irreparable punishment, but to alleviate and console those who, although not sharing the crime, suffer consequences of the expiation imposed by the law.

Spain having proved her sincerity by granting large pecuniary relief to families of British subjects executed at Santiago, would fail in her just duty did she not act in the same way toward the families of American citizens captured and executed.

The indications in my note of August fourteenth prove that, in settling thus with England, no discrimination was thought of against the United States. You will please express conformity, so that payment may be made through Spanish minister at Washington, in same terms as accepted by England.

Regarding Burriel, Mr. Ulloa says substantially:

* * * * * * *

and proceeds as follows—

I have answered your notes, and showed our point of view, trusting that the government of Washington will examine our arguments in a spirit of conciliation, in order to arrive at a direct settlement. But if my hopes fail, and the United States do not regard this affair as terminated, notwithstanding my declarations, all of which are favorable to the concord and better understanding of the two countries, then Spain will be prepared to submit the integral settlement of our differences to arbitration.

Minister concludes by reminding me that many of the differences between the two countries have arisen from violations of law committed by foreigners in the United States, and expresses hopes that, in the interests of both nations, no such occasions of difference may hereafter arise. In a private note Mr. Ulloa requests me to telegraph you the material contents of his official note, which I have done, but I think it important you should see the full text before taking any definite action.

CUSHING.

[For text of Mr. Ulloa's note see inclosure to No. 46 *post.*]

No. 43.

Mr. Fish to Mr. Cushing.

[Telegram.]

WASHINGTON, *December 7, 1874.*

CUSHING, *Minister, Madrid:*

First. Telegram of December 4 received imperfectly. So far as understood, the first point in Ulloa's note seems to assert legality of capture of Virginius as to make acceptance of indemnity, under second point, an admission of the first, and to estop denial of lawfulness of capture.

Second. If arrangement for indemnity be reached, care must be taken that it carries with it no implication admitting any point which this Government has controverted with regard to the lawfulness of the capture or of the subsequent executions. If satisfactory indemnity be offered, not coupled with any admissions, implied or expressed, on these points, it will be received.

Third. On third point, Spain seems to claim that the investigation into conduct of authorities at Santiago must be made.

* * * * * * *

Fourth. The distinction between white and colored in the indemnity to England cannot be admitted as founded on color; but a discrimination resting on the relative rank and wages of the parties is proper, and this is the basis of the discrimination asked by this Government in favor of officers.

It is hoped that you may succeed in reaching a satisfactory settlement. * * * * * *

FISH, *Secretary.*

No. 44.

Mr. Fish to Mr. Cushing.

[Telegram.]

WASHINGTON, *December 11, 1874.*

CUSHING, *Minister, Madrid:*

If Spain will pay indemnities as indicated in my telegram of November 28, without any admissions or implications on the part of this Government, you are authorized to discuss and arrange details.

* * * * * * *

Should you have doubt on any point, you will refer to this Government, and before concluding a settlement you will submit its terms.

FISH, *Secretary.*

No. 45.

Mr. Cushing to Mr. Fish.

No. 156.] LEGATION OF THE UNITED STATES,
Madrid, November 25, 1874. (Received December 18.)

SIR: I inclose herewith translation and copy of the original of a note from the minister of state, marked "private," under date of November 24,

1874, and received this day, expressing the resolution of the Spanish government to make indemnity in behalf of citizens of the United States executed at Santiago de Cuba, on the same basis as in the case of the subjects of Great Britain, with proviso of previous explanation on some points of difference; and, in the absence of agreement in that respect, then at once to recur to arbitration.

It is the note of which the material parts were this day transmitted to you by telegraph.

* * * * * * *

I am, &c.,

C. CUSHING.

[Inclosure 1 in No. 156.]

Mr. Ulloa to Mr. Cushing.

[Private.—Translation.]

MINISTRY OF STATE, *November 24, 1874.*

MY ESTEEMED FRIEND:

* * * * * * *

I must, therefore, repeat to you that the Spanish government has been from the first disposed to concede to the United States an indemnification in every respect similar in its signification and in its limits to that which it has granted for the execution of the English subjects, provided that stipulation be made, as has been with England, respecting the character of this resolution, and that beforehand shall be fixed and determined the several points which, in the affair of the Virginius, establish for Spain, with respect to the American Republic, different rights from those which exist in this matter with regard to England. Those rights which are clearly derivable from the acts and declarations of the Government of Washington itself being determined, Spain will take satisfaction in proceeding with the United States as it has acted with England; and it gives me pleasure to make this known from now henceforth, being also able to confide to your nobleness and discretion that, all the eventualities which may present themselves to our rectitude being foreseen as they are in the protocol of November, 1873, Spain will not in any contingency depart from that which is stipulated in the said protocol, or, expressing myself in other terms, that in the improbable event of not arriving at a direct accommodation, we will have recourse to the arbitration stipulated in that document.

I believe that in these lines I have fully demonstrated to how high a point the Spanish government carries its conciliatory sentiments, and its desires to maintain with that of President Grant a worthy and cordial understanding founded in reciprocal esteem.

Within a very short time I will explain these indications, to which I have not before given an official form owing to the necessity of asking from Cuba reports and data, which I now fortunately possess complete.

I have, meanwhile, wished to anticipate to your clear intelligence a confirmation of our resolution, and to improve an occasion, as satisfactory as all have been, to again subscribe myself with the greatest consideration your attentive and obedient servant,

(Q. B. S. M.,)

AUGUSTO ULLOA.

His Excellency Mr. CALEB CUSHING,
Minister of the United States.

No. 46.

Mr. Cushing to Mr. Fish.

No. 177.] LEGATION OF THE UNITED STATES,
Madrid, December 5, 1874. (Received December 24.)

SIR: I inclose herewith translation of an official note from the minister of state, together with translation of a private note, both delivered at midnight of Thursday, the 3d instant.

* * * * * * *

I content myself, at present, with calling your attention to certain expressions in the private note which tend to show that, while Mr. Ulloa considered it his duty to argue his side of the question in response to my several notes, nevertheless, in his understanding of the matter, the acceptance of his proposition, with such ultimate modification of it as you may propose, will constitute a definitive settlement of the whole controversy.

In fact, when taking into consideration the very positive tone of some of my notes to Mr. Ulloa, it seems to me that this note of his, constituting argumentative response to all mine, deserves to be regarded as calm and temperate in spirit and language, and conceived in the purpose of not keeping alive the controversy.

I have, &c., C. CUSHING.

[Inclosure in No. 177—Translation.]

Mr. Augusto Ulloa to Mr. C. Cushing.

MINISTRY OF STATE,
Madrid, December 3, 1874. (Received December 3—12 night.)

SIR: On the 14th of August last, while answering the note which you were pleased to address me under date of the 21st of July, I had the honor to set forth to you the reasons which, against its will, prevented the Spanish government from satisfying, at that moment, the desires of the Government of the United States, by giving a definitive reply to the reclamations presented by you in consequence of the seizure of the steamer Virginius on the coast of Cuba. Among the causes of that enforced delay, the principal ones were the necessity under which the government was of hearing the authoritative opinion of the high consultive bodies of the state concerning such an important matter, and of completing in this ministry the detailed study of all the antecedents with certain data, of which I awaited the collection, in order to form the exact and impartial judgment I desired before adopting a definitive resolution.

All the procedures which were counseled by the most careful prudence and by the desire to form a sound opinion having been followed, the Spanish government has now the satisfaction to answer with completeness the notes from your legation dated 26th and 27th of June, 21st of July, and 24th of September, of this year, and even the last, of the 30th ultimo, which has recently reached my hands, taking up the principal points of each, and of which I was not able to treat with the necessary opportuneness for the reasons indicated.

It is impossible to ignore the extremely grave importance attaching to this question, known as that of the Virginius, or the responsibility which the governments of Spain and of the United States have contracted in the eyes of their respective countries, taking upon themselves to acquire knowledge of the facts and submitting the settlement of their differences to the attentive examination of the executive power, the zealous but dispassionate guardian of the honor and of the rights of the nation which it represents.

Fortunately, everything leads to the hope that both the government of Madrid and the Cabinet of Washington, inspired solely by the purest sentiments of justice and of equity, have no insuperable obstacle to encounter in reaching an honorable agreement worthy of the two great nations, who have been ever united by the closest ties of friendship, and who equally contemplate in their progress and in a lasting peace the realization of their present welfare and their aspirations in the future.

But still, in order that one and the other government, starting from so lofty a point of view and without abandoning the defense of the high interests which they have in charge, may succeed in coinciding in a solution equally acceptable to all, it would be necessary that the one as well as the other, yielding somewhat of that which they may deem to be of strict right in their pretensions, or which they may hold to be unquestionable in their own estimation, should hasten to seek in equity and in general expediency the honorable and satisfactory decision which the inflexible precepts of strict or absolute justice could not vouchsafe to them without laborious efforts, and, perhaps, without painful moral sacrifices.

The Spanish government, anxious to succeed, by all legitimate and decorous means, in putting an end to such vexatious differences, will, for its part, not shrink from making those concessions and renunciations which do not imply abdication of the sovereignty and independence of the nation, or which might be construed as an abandonment of the national dignity, provided that the Government of the United States, nobly co-operating to the same end, is disposed to make equal concessions under like reservations.

This solemn controversy being thus set upon practical ground, mutually advantageous from the point of view of a speedy and satisfactory conclusion without detriment to our respective national interests, nothing could supervene to hinder the realization of the friendly desires which animate alike the Spanish government and that of the Republic of the United States, and their present governors would win the enviable honor of having brought to a happy conclusion this laborious conflict, without disturbance of the good relations which have ever existed between the two peoples, but rather strengthening the ties of amity and of cordial understanding which unite them.

The Government of the United States insists that it has never recognized the right of other powers to detain and visit, in free seas and in time of peace, the vessels which may carry the American flag, and that, relying upon the inflexibility of this principle, it is bound to consider the seizure of the Virginius as illegal and in violation of the international practices admitted among cultured nations.

Without pausing to examine how far it is expedient to attribute this inflexibility to international principles and rules which do not directly emanate from the immutable principles of right, and which need the sanction of time, of universal custom, and of general and explicit consent of nations, it will be sufficient to observe that the right of visit, by its own nature, is one of those which have been most subject to the vicissitudes of the times, to the influence of progress, and to the development of maritime commerce, rigor in its application having been always dependent upon circumstances, as it could not otherwise be. Referring ourselves only to the modern epoch, we see the United States combating it tenaciously prior to 1842 with respect to the abolition of the slave-trade, imposing their prohibition subsequently in the Ashburton treaty, yielding under certain conditions in 1861 for reasons which affected social interests of magnitude; and agreeing, lastly, to maintain a cruiser on the coasts of Africa to visit and search the vessels of the Union. I mean, by this, that whatever may be the rigor with which the United States assert the maintenance of that prohibition, nothing has opposed, or is likely to oppose in future, the modification of its conditions according to circumstances, an inflexible rigidity not being essential, as it is not for the objects of the precept. Laudable is the object for which the right of search is denied in the time of peace; plausible and meritorious is the desire to protect the freedom of the seas from the abuses of force, and to shelter the commerce of all nations from the vexations and the prejudices which might be inflicted thereon by the arbitrariness of the stronger power. But shall we not find some practical inconvenience in the exaggerated limitation imposed upon this right of visitation? Could there not be conflict among the principles that support and recommend it, and other legitimate rights which merit consideration, and which ought not to suffer or be disparaged?

The right to inquire the nationality of a merchant-vessel, and even to board it in certain cases, on the high seas, has been always regarded as a means of exercising maritime police, and of protecting the security of commerce between civilized nations. But as the right of visit is a limitation set upon the freedom of the seas, which not only does not restrict it, but rather guarantees and protects it, the exaggerated and narrow conditions to which the United States seek to reduce it might result in converting the seas into a secure and inviolable asylum for the wrong-doer, who would choose that element as the field of his criminal undertakings. It is not to be deduced herefrom that, at any time, and for all motives whatsoever, the right of visit should be permitted as may suit the arbitrariness or the convenience of the war marine; but neither does it appear rational to exclude it decisively and absolutely under all circumstances, except during a state of war and between belligerents recognized as such. Neither natural law, nor the law of nations, can authorize, nor the independence of nations permit, that the enemies of a sovereign state can, with impunity, navigate the high seas, carrying soldiers and resources to the hosts of an enemy without the country menaced by such an invasion having the privilege of disturbing them, provided that they sail under the protection of a neutral flag and warily keep at a distance of three miles from the coast, even though it be known and demonstrated evidently that the object of their presence upon the sea is aggressive and hostile. An unconditional and absolute prohibition would, moreover, restrict, if not completely annul, the right of self-preservation and of self-defense, which is a right with respect to other countries, and one of the most solemn and sacred of the duties of any state with relation to its citizens; or, as the eminent English jurisconsult, Phillimore, says,* it "is the first law of nations, as it is of individuals. A society which is not in a condition to repel aggression from without is wanting in its principal duty to the members of which it is composed and to the chief end of its institution." The same writer and others, Wheaton, Halleck, not less illustrious among the American authorities, concede to the right of defense the first place above all other rights, and agree that it is pre-eminent and superior to that of the inviolability of territory; so that in case of conflict it should be the first to be sustained, even though at the expense of the second.

*Phillimore, International Law, part III, chap. X, paragraph CC., XI. (cc.)

After the official declaration made by the Government of the United States, in conformity with the opinion of the learned Attorney-General, in which that worthy magistrate stated that the Virginius, at the time of her capture, carried the American flag illegally, it would be idle to pause to examine the question of the flag, already officially decided by the Government of Washington, in view of the numerous testimonies and proofs presented by the minister plenipotentiary of Spain, Señor Polo.

Given this state of things, it is clear that no offense whatever could have been committed against the American flag in the detention and seizure of a vessel which carried it at her mast-head unduly and without right thereto, and in virtue of an illicit and punishable fraud. Nay, more, still less could an injury have been done, by the act of seizure, to the crew and passengers, since they were not protected at that time by any legitimate and recognized flag, and, therefore, application could not be made to them of the legal fiction that the deck of a vessel in free waters constitutes a part of the territory of the nation to which she belongs.

It being proved to the satisfaction of the United States that the Virginius was not American, the query is suggested as to what may be the nationality of a ship which carries no legitimate flag and is not in possession of legal documents to accredit her character. All mercantile legislation and naval ordinances deny in general to foreigners the right to acquire merchant-vessels within the territory, and even the right of commanding them without being subject to certain conditions. So, therefore, the Virginius can have no other nationality than that of her owner.

In the preamble to the important document subscribed by the Attorney-General, to which I have already made reference, after citing the declarations of several individuals who affirm that that vessel was the property of the Cuban Quesada, the worthy magistrate adds, textually: "Nothing appears to weaken the force of this testimony, though the witnesses were generally subjected to cross-examination; but, on the contrary, all the circumstances of the case tend to its corroboration." It is, moreover, confirmed by the numerous documents and affidavits presented by our minister in Washington, without any one having a doubt, that the Virginius was acquired by the so-styled General Quesada, and probably, also, by several other insurgents, likewise sons of the island of Cuba, who paid for the vessel out of their own resources.

The question, therefore, respecting the ownership of the Virginius, which had at first presented itself as the occasion of lengthy and vexatious debates in the diplomatic field, has lost its gravity, and now offers itself to the consideration of the two governments interested under the simple proportions of a question of law.

It would be derogatory to your recognized erudition to remind you of the legal principles by which persons and things found within the territory of an independent and sovereign nation are subject to its jurisdiction wherever found, whether upon the ocean or in foreign dominions, without there existing the least exception to this rule respecting the subjects of the country. Spain, consequently, has not violated any foreign right in capturing on the open seas, by means of one of her naval vessels, a ship of which the ownership belonged to one or more of her subjects, without the party making the seizure incurring any responsibility other than that which may be required of him by his natural chiefs, conformably with the domestic laws of the country.

From what I have thus far brought to your attention, I believe that I have shown:

1st. That in the act of the seizure of the Virginius Spain violated no foreign territory, since she effected the capture in that which is considered common to all nations; that is, on the high seas.

2d. That she has not compromised the free navigation of the seas, since her cruiser set out in search of the Virginius and had no necessity for detaining her or visiting her before the seizure, since the maneuvers of the latter upon sighting the Tornado, her change of course, her casting her cargo overboard during her flight, and other circumstances strongly suspicious, confirmed the belief that she was the awaited filibuster vessel.

3d. That Spain has caused no prejudice to maritime commerce, since the Virginius was not a vessel dedicated to lawful traffic, but to the illicit and punishable transportation of contraband of war destined to assist the insurrection in Cuba, and that her ownership could not be legally claimed by a third power.

The examination as to the seizure of the Virginius having been submitted to the competent tribunal, the judgment declaring her good prize is still pending the report of the council of state, and as soon as it receives the approbation of the government, I shall have the honor to acquaint you therewith, in order that you may be pleased to request the appropriate instructions from the Government of the United States with respect to the restoration of the vessel in question, or the payment of her value in case she shall have disappeared, to our representative in Washington, in consequence of the declarations of the American Government with respect to her nationality, to the verdict of the prize-court, and to having fulfilled the object and conditions with which she was surrendered by the authorities of Cuba to the Government of the United States.

We have now to examine the status in the eyes of the law, of the persons of different nationalities who were found on board of the Virginius when she was captured.

The Government of the United States rejects the qualificative of "pirates" which has been applied to them in official documents by several Spanish functionaries; and you yourself, in your note of the 24th of September, not merely find it erroneous and inexact, but hold it to be absurd. This is not the most opportune moment in which to trouble your attention by burdening this long note with citations and texts from eminent authors, with which I might, perhaps, succeed in proving the contrary, founding my reasoning upon the important modifications introduced by international law on this point. It is true that the older writers, in the first dawnings, so to speak, of science, considered as essential certain circumstances and the concourse of determinate acts to qualify as piracy the offenses consummated on the seas, and which constituted the dividing-line between the corsair and the pirate. One of those circumstances was the most characteristic, the *animus furandi*, proved in the crew of the vessel, and there were others which it is not necessary to recall. According to modern international law, which is less casuistical, no doubt, it is sufficient to accuse a ship of the crime of piracy that a purpose be proven on the part of her officers and crew to destroy the shipping of foreign nations which are not at war, to cast their cargo overboard or sink it, and to devastate the coasts of a country, not *animo lucrandi*, or with intent to profit by such damage, but to satisfy the hatred or the vengeance of the aggressor, or with other equally criminal purpose. Such is the point of view of modern writers, even among the most uncompromising paladins of the freedom of the seas, such as Baron Cussy, Pinheiro, Bluntschli, Ortolan, and others. So, therefore, we may to-day qualify as piracy any violence whatever committed on the sea, or immediately adjacent thereto, by persons who do not represent any known state or nation, it being sufficient in this relation that the sea be the theater of the crime for international law to consider its authors punishable at the hands of any independent state.

The expedition of Narciso Lopez in 1850, which is well known to all, and which in many respects has great analogy to that of the Virginius, merited, jointly with the reprobation of all sober-minded men, the qualification of being a declared act of piracy, and in the English Parliament Lord Brougham, inquiring of the government if the fact announced by the press was true, expressed the desire that condign punishment should be imposed upon those *execrable pirates*, because, added the honorable lord, *these persons are pirates*. In the same opinion Lord Aberdeen concurred in the House of Lords and Mr. Disraeli in the House of Commons.

In this way also it was regarded, in the light assuredly of modern doctrine, by a most worthy and learned authority, to whom no one, and least of all the Government of the United States, can take exception, the honorable Mr. Seward, formerly Secretary of State. This estimable officer, in the first two years of the secessionist rebellion which had broken out in the States of the American Union, addressed various official dispatches to the maritime powers, in which he set forth in different forms, and maintained with great store of arguments, that the confederate cruisers were *pirates*, and should be treated as such by the governments of Europe, a theory which merited, besides, the approbation of the American Congress. The secessionists having been recognized as belligerents by different governments which had not taken into consideration the character of pirates attributed to them by the theories of Mr. Seward, the latter replied, protesting against the recognition, and declaring it to be an act contrary to good relations of friendship, and as a violation of international laws. It is not to be supposed, whatever may have been the sentiments and the duties which impelled the then Secretary of State to combat the secessionist rebels, that he attributed to them the *animus furandi* or the exclusive intent of *pillage and plunder*, which, conformably with the ancient doctrine, are essential elements of the crime of piracy.

I would have wished to succeed in demonstrating to you that the fundamental motive which the Spanish government has had to consider the passengers and crew of the Virginius as pirates is not so very absurd nor so very unreasonable; and that supposing that in this it had fallen into error, it would have been induced thereto by the weighty opinions of eminent writers and authorities, illustrious by their learning and by the elevated position reached by them in powerful nations, wherein welcome and tribute are paid to ideas of advancement and progress in social and political science.

The terrible consequences which the rash and criminal expedition of the Virginius has had for some of the unhappy persons who were on board—consequences which the executive power could not avert, being unfortunately received in Santiago de Cuba too late by reason of the interruption of the telegraph-lines by the insurgents—could not do less than move the generous sentiments of the Spanish government, so painfully situated between the strict fulfillment of the laws in special circumstances, and the impulses of humanity and of commiseration common to all honorable men, but which should be violently stifled before the imperious voice of duty and the defense of the high interests confided to the public powers.

That duty fulfilled, sentiments of humanity may still recover all their force and endeavor to seek, not a remedy for an irreparable punishment, but alleviation and consolation for those persons who, without having had part in the commission of the crime, participate fatally in the terrible consequences of the expiation imposed by law.

The Spanish government, which has very recently proved the sincerity with which it professes these noble sentiments by conceding a large pecuniary relief to the families of the English subjects captured in the Virginius, and executed at Santiago, would fail in a duty of justice if it were not prepared to act in the same manner and in the same proportion with respect to the families of the American citizens who, being captured on the vessel in question, were afterward executed. The indications which, upon this point, I had the honor to make to you in my note of the 14th of August, are a proof that, in conceding that sum to the government of Her Britannic Majesty, that of Spain could not have had the intention of establishing an unjustified preference, nor even a difference, between two nations alike friendly to Spain and with equal claim to her consideration and sympathies. You may, therefore, be pleased to indicate to me your conformity on this point, in order to proceed to the payment of the corresponding sum in the same terms as those accepted by the British government, and which terms are contained in the two inclosures I send to you herewith.

It remains to me to answer, Mr. Minister, the last note which, under date of the 30th ultimo, you have been pleased to address me, and in which you express to me the desire of the Government of Washington to see the fulfillment of the article of the protocol of November 29, 1873.

* * * * * * *

I have made answer to the principal questions which have arisen in the matter of the Virginius, and set forth the point of view of the Spanish government, in the confidence that the Cabinet of Washington will examine our arguments through the prism of conciliation and of the friendly sentiments which have inspired them, in order that a direct settlement may be arrived at between the two governments. But if, contrary to the hopes of the Spanish government, its desires are not realized, and on the part of that which you so worthily represent in this capital, it be deemed that the case be not reached for regarding this affair as terminated, notwithstanding the declarations I have had the honor to make, all of which are favorable to the concord and better understanding of the two countries, then, complying with that stipulated by both nations in the before-cited protocol of the 29th of November of last year, we are prepared to submit the integral settlement of our differences with regard to the Virginius to the arbitration of the powers whose designation respectively corresponds to the Spanish government and to the Government of the United States.

The Spanish government believes it has demonstrated, through my channel, in the present note, the sincerity of its sentiments, and its firm purpose to maintain and draw closer the ties of friendship which bind Spain to the United States. The same sincerity causes it to appeal to the good faith of the United States, hoping that, both with reference to the present question and to the questions which may arise in the future, it will be borne in mind that, doubtless against the will of the Government of Washington, almost all the expeditions launched against the island of Cuba have set out from American ports, and that in the principal cities of the Union there exists a permanent conspiracy against the integrity of our territory, which makes public boast in the press and in meetings, of its criminal intentions. It is not my object to enter on a discussion as to how far the efficacy of the domestic laws of that country reaches in preventing these aggressions against a friendly people. If I permit myself to make this observation, which you will appreciate at its just value, it is solely in order to fix the situation in which we are placed with respect to the United States, and to explain thereby the different conflicts which have occurred between the two nations. To the termination of these differences, once for all, our wishes are directed, and we trust that the same desires will animate the American Government, even though it only consults its commercial interests, which suffer so much by the prolongation of an insensate rebellion, which, notwithstanding the warmth given to it by its sympathizers in foreign countries, has shown its impotency for triumph, being fecund only in evils, perturbations, and ruin for the mother country.

I improve this occasion to repeat to you the assurances of my most distinguished consideration.

AUGUSTO ULLOA.

The MINISTER PLENIPOTENTIARY OF THE UNITED STATES.

No. 47.

Mr. Fish to Mr. Cushing.

No. 108.] DEPARTMENT OF STATE,
Washington, December 30, 1874.

SIR: Your dispatch No. 177, with which was inclosed a copy of the elaborate note of Mr. Ulloa on the question of the Virginius, in reply to your communications, and of his private note forwarded at the same time, has been received.

I have read the note of Mr. Ulloa with interest and careful attention. While I cannot agree with many of his assumptions and arguments, I must express satisfaction with its general tone and tendency, and with its temper and conciliatory expressions.

In this view, it is in marked contrast with some of the papers which have, in the past, emanated from the officials of Spain.

So far as the questions in difference are concerned, the general correspondence of this Department with Admiral Polo, and of yourself with the minister of state, fully present the views of this Government. Further argument would amount to a repetition.

In fact, Mr. Ulloa's note is to be taken as an answer to your communications, so as to complete the record, rather than as a paper presenting matter for reply.

I must, however, express my regret that Mr. Ulloa should have deemed it necessary, even if in deference to public feeling in Spain, to refer to the executions at Santiago as "the strict fulfillment of the laws in special circumstances," or as called for by "the imperious voice of duty," or to take from the moral effect of the indemnity proposed by characterizing the reparation as actuated by sentiments of pity consequent upon a "duty fulfilled," and as caused by a desire to alleviate the misfortunes of those who suffer through punishment imposed on others by the law.

I could have hoped that a review of all the facts attending the executions, and a consideration at this late day of those barbarous and cruel acts, happily without parallel, would have deterred the accomplished minister of state from the use of any expression, and from allowing himself to be committed to any view tending to justify those executions.

While such expressions, accompanying an offer of settlement, may not prevent the acceptance of the offer, this Government would fail in its duty did it not signify its dissent from expressions tending to justify or apologize for these acts; and this may be done as suggested by you and approved in my telegram of December 11, by a counter-protest or a joint memorandum, precluding any inferences adverse to the position of this Government in regard to the acts complained of.

Without considering what supposed necessity may demand such an apparent justification, I cannot but believe that had Spain joined the civilized world in a denunciation of these executions, and had she long since visited prompt and effective punishment on the guilty parties, the moral support she would have gained thereby would have largely exceeded any corresponding detriment.

The instructions forwarded you by telegraph, and the absence of any observations from you upon the note in question, which, from your dispatch, may shortly be expected, make further reference thereto at this time unnecessary.

I am, &c.,

HAMILTON FISH.

No. 48.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *February 10, 1875.*

FISH, *Secretary of State, Washington:*

Interview to-day with Castro.

* * * * * * *

Satisfactory sum of indemnity free from condition of accountability required of England to be stipulated by immediate further interchange of officious notes.

CUSHING.

No. 48.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *February 16, 1875.*

FISH, *Secretary of State, Washington:*

Negotiation rests on my note of eleventh to Castro, mailed same day. His reply sent to-day.

* * * * * * *

CUSHING.

No. 50.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *February 16, 1875.*

FISH, *Secretary of State, Washington:*

Diplomatic convention by interchange of notes completed to-day, to the following effect, namely:

First. Spain allows eighty thousand dollars in full of all indemnity.

Second. Allowance unconditional.

Third. All question of the hulk laid aside.

Fourth. Full assertion on my part of illegality of the acts complained of.

Fifth. Distribution to be made by the United States in their discretion.

Sixth. No posterior accountability as was required of England.

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CUSHING.

No. 51.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *February 21, 1875.*

FISH, *Secretary of State, Washington:*

Important interview with Castro to-day, in which terms of final written agreement were practically settled, on bases, first, that indemnification is co-extensive with claims preferred; second, that no issue is raised as to the persons who may receive it, whether for executions or a detention; third, that time, place, and manner of payment shall be satisfactory; and fourth, that distribution shall be made by the President, in his discretion. I hope to cable text of agreement by Tuesday.

CUSHING.

No. 52.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *February 21, 1875.*

FISH, *Secretary of State, Washington:*

My note to Castro is as follows:

MADRID, *February 11.*

[Confidential.]

Mr. Minister:

MY DEAR SIR: I have the honor herewith, in respectful accordance with a suggestion made by your excellency during our conversation of yesterday, to submit my views regarding the precise sum of indemnity proper to be allowed to the United States in the matter of the Virginius. Your excellency will observe in reading the note of Mr. Ulloa to Mr. Macdonell, of the 6th of August, that the sum paid to Great Britain in this behalf purports to be an advance or partial payment, leaving the total amount to be fixed by future negotiation.

Now, as your excellency has already, induced by laudable desire of concord, agreed that the sum allowed to the United States shall be unconditional, I propose, in the same desire of concord, that it shall be definitive and without having the door remain open for further reclamation in the premises, which proposal cannot but be acceptable to the Spanish government. Moreover, the arrangement made with Great Britain comprehended another condition which, as I think, it is for the interest both of Spain and the United States to pretermit; that is, the engagement of Great Britain to account to Spain for the distribution of the sum in the first instance accorded. It seems to me that such a condition might lead to future causes of dispute which it would be better for our respective governments to prevent and avoid.

This point was much discussed by the tribunal of arbitration at Geneva, with the judicious conclusion that it was most advisable to decree a specific sum in gross to be paid by Great Britain, committing to the United States the national duty and the national responsibility of the equitable distribution of such sum among the several claimants without any accounting therefor to Great Britain. I propose, therefore, that the sum to be paid in the present case be a final one, and intrusted, in so far as regards the distribution thereof, to the discretion of the United States.

Our claim was based on the sum paid to Great Britain for each ordinary white man as a starting-point, but with exclusion of the lesser sum allowed for colored youths, and it proceeded on the calculation of an increased rate for officers, that increase not arbitrary, but measured by the relative rate of wages of officers and men in the steam-service.

In this respect, also, my judgment was guided by experience gained in the arbitral proceedings at Geneva.

The necessary result was a larger sum total than that offered to Great Britain. First, because no depreciatory discrimination for colored persons entered into my calculations; secondly, because it embraced a larger number of persons; and thirdly, a greater proportion of officers, including the captain.

In view of all which, I propose, as the lowest amount which will satisfy my Government, the sum of $80,000, to cover all claims of the United States for pecuniary indemnity in the matter, whatever they may be; and still more to facilitate the conclusion of the present provisional arrangement, I propose to leave the time of payment to be fixed in our official agreement, feeling sure from what I have had the gratification of seeing of the spirit of justice, frankness, and good faith which animates your excellency, that we shall readily agree on this point, since you will not propose any delay unworthy of Spain or unacceptable to the United States. If your excellency shall be pleased to signify assent to these views, it will be my most agreeable duty to telegraph home that this painful controversy, transmitted to you by previous administrations, has, by our joint efforts, been at length concluded in a manner honorable to both nations and eminently conducive to a permanent good understanding between the respective governments.

I avail, &c.,

His note to me reads thus:

MINISTRY OF STATE,
The Palace, February 15.

[Confidential.]

MY DEAR SIR: In due time I received your excellency's letter of the 11th instant, which, to my deep regret, manifold and urgent occupations have not permitted me to answer sooner, as I should have desired, in order to respond duly to the friendly solicitude displayed by your excellency for the speedy and definitive settlement of the important affair which occupies us. I have, in compensation, the honor to be enabled to-day to inform your excellency, in the name of the government of His Majesty, of the full acceptance of the proposition of the Government of the United States, which fixes at $80,000 the total of the sum to be paid by that of Spain for distribution among the families of the Americans shot in consequence of the capture of the Virginius.

In communicating to your excellency this conformity, I must add that, in treating of a Government so worthy of consideration as that of Washington, and of persons so worthy of respect as those who compose it, whatever the form in which this amicable settlement between the two cabinets had been effected, it would never have been my intention to propose that the Government of your excellency should give account of the manner in which the sum agreed upon was distributed, and much less having intervened so efficaciously in these negotiations one who, like your excellency, merits by his distinguished personal qualities the highest esteem of the government of His Majesty. This distribution, therefore, appertains exclusively to the Government of the United States, inspired by the upright and notable sentiments which animate it. It remains to me now to await with real impatience until, the representation of your excellency near His Majesty the King being regularized, we can in common accord formalize this agreement, due principally to the spirit of the friendly sentiments which exist between the two governments, and of which your excellency has been a faithful and most worthy interpreter in the course of the negotiations.

I am, sir, &c.

No. 53.

Mr. Fish to Mr. Cushing.

[Telegram.]

WASHINGTON, *February 24, 1875.*

CUSHING, *Minister, Madrid:*

Have submitted to President your note of 11th, and Castro's of 15th, as received by cable. He approves of agreement as therein proposed. You will telegraph fact and date of signature, and, so soon as credentials are received and presented, will sign final agreement, and immediately telegraph the fact.

FISH.

No. 54.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *March 2, 1875.*

FISH, *Secretary of State, Washington:*

* * * * * * *

Credentials have arrived, but will not be delivered until after hearing from you. All European powers have recognized Alfonso.

Draught of agreement is as follows:

In consideration of the reasons set forth, and the reclamations made reciprocally in various conferences to that effect, had between his excellency Don Alexandro Castro, minister of state, and his excellency Mr. Caleb Cushing, representative of the United States, as also of the notes which have passed between them, and desiring, at the same time, to put an end, by means of an equitable and friendly accord, to the reclamations presented by the Government of the United States, in consequence of what occurred at Santiago de Cuba, in regard to the persons of the officers, crew, and passengers of the steamer Virginius, it being understood that from these reclamations are to be excluded, in so far as respects the ship's company, all individuals indemnified as British subjects, and with respect to passengers, including only certain American citizens, they have agreed:

First. The Spanish government engages to deliver to that of the United States the sum of eighty thousand dollars in coin, or four hundred thousand pesetas, for the purpose of relief of the families or persons of the ship's company and passengers aforesaid of the steamer Virginius.

Second. The Government of the United States engages to accept the sum mentioned in satisfaction of reclamations of any sort which, in the sense of pecuniary indemnification in this behalf, might otherwise be advanced against the Spanish government.

Third. When the sum referred to in article one shall have been received, the President of the United States will proceed to distribute the same among the families or the persons interested, in the form and manner which he may judge most equitable, without being obliged to give account of this distribution to the Spanish government.

Fourth. The payment of the eighty thousand dollars, or four hundred thousand pesetas, shall be effected by the Spanish government at Madrid in specie, and in three periods of two months each—thirty thousand dollars, or one hundred and fifty thousand pesetas, for each of the first two installments, and twenty thousand dollars, or one hundred thousand pesetas, in the last.

Fifth. The present agreement will be ratified by both the undersigned so soon as his excellency the representative of the United States shall have presented the credential letters which accredit him as minister plenipotentiary near His Majesty the King of Spain.

CUSHING.

No. 55.

Mr. Fish to Mr. Cushing.

[Telegram.]

WASHINGTON, *March 3, 1875.*

CUSHING, *Minister, Madrid:*

You are authorized to present credentials. Immediately thereupon final agreement to be signed.

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FISH.

No. 56.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *March 9, 1875.*

FISH, *Secretary, Washington:*

Officious agreement has been signed, substantially as telegraphed on the 2d. Credentials to be presented on the 10th.

CUSHING.

No. 57.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *March 12, 1875.*

Credentials presented the 10th. Ratification signed the 11th, and sent the same day by express.

CUSHING.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 166.

IN THE SENATE OF THE UNITED STATES.

Ordered, That the letter of Hon. T. Estrada Palma to Hon. Richard Olney, Secretary of State, of the date of December 7, 1895, and accompanying documents be reprinted for the use of the Senate.

LETTER OF HON. T. ESTRADA PALMA TO HON. RICHARD OLNEY, SECRETARY OF STATE.

WASHINGTON, *December 7, 1895.*

SIR: I hand you herewith a statement of the facts upon which I, as authorized representative of the Cubans in arms, ask that the rights of belligerency be accorded them by your Government.

If you so desire I can exhibit to you the originals of the documents mentioned or set forth in said statement.

Should it be necessary or desirable for me to point out the arguments, based on the facts submitted, which I deem proof that we are now in condition to ask for belligerency, it will afford me great pleasure to do so.

Begging your earliest and most favorable consideration of this subject, I have the honor to remain, very respectfully, yours,

T. ESTRADA PALMA.

To Hon. RICHARD OLNEY,
Secretary of State of the United States of America,
Washington, D. C.

WASHINGTON, D. C., *December 7, 1895.*

SIR: While admitting that, as a rule, governments do not take cognizance of the justice or injustice of a struggle in which they are called upon to grant the rights of belligerency to one of the contending parties, the revolution for the independence of the Cuban people, initiated on February 24 last, is so similar in its character to that which resulted in the establishment of the foremost Republic in the world, the United States of America, that I feel called upon to point out the causes leading to the present uprising in Cuba.

CAUSES OF THE REVOLUTION.

These causes are substantially the same as those of the former revolution, lasting from 1868 to 1878 and terminating only on the representation of the Spanish Government that Cuba would be granted such reforms as would remove the grounds of complaint on the part of the Cuban people. Unfortunately the hopes thus held out have never been realized. The representation which was to be given the Cubans has proved to be absolutely without character; taxes have been levied anew on everything conceivable; the offices in the island have increased, but the officers are all Spaniards; the native Cubans have been left with no public duties whatsoever to perform, except the payment of taxes to the Government and blackmail to the officials, without privilege even to move from place to place in the island except on the permission of governmental authority.

Spain has framed *laws so that the* natives have substantially been *deprived of the right of suffrage.* The taxes levied have been almost

entirely devoted to support the army and navy in Cuba, to pay interest on the debt that Spain has saddled on the island, and to pay the salaries of the vast number of Spanish officeholders, devoting only $746,000 for internal improvements out of the $26,000,000 collected by tax. No public schools are within reach of the masses for their education. All the principal industries of the island are hampered by excessive imposts. Her commerce with every country but Spain has been crippled in every possible manner, as can readily be seen by the frequent protests of shipowners and merchants.

The Cubans have no security of person or property. The judiciary are instruments of the military authorities. Trial by military tribunals can be ordered at any time at the will of the Captain-General. There is, beside, no freedom of speech, press, or religion. In point of fact, the causes of the Revolution of 1775 in this country were not nearly as grave as those that have driven the Cuban people to the various insurrections which culminated in the present revolution.

A statement of the facts and circumstances that have forced the Cubans from peaceful to belligerent measures of obtaining that redress which they are satisfied can only come with absolute independence and republican form of government are set forth at large in the pamphlet hereto annexed, marked "A."

ABSOLUTE INDEPENDENCE OR EXTERMINATION.

Every promise of reform made to procure peace in 1878 having been broken by the Spanish Government, and subsequent peaceful endeavor in that direction having proved useless, Cuba is to-day in the condition described by Vattel (Law of Nations, sec. 291):

> If his (the sovereign's) promises are not inviolable, the rebels will have no security in treating with him; when they have once drawn the sword they must throw away the scabbard, as one of the ancients expressed it, and the prince destitute of the more gentle and salutary means of appeasing the revolt will have no other remaining expedient than of utterly exterminating the insurgents; these will become formidable through despair; compassion will bestow success on them; their party will increase, and the state will be in danger.

The only solution of the revolution in Cuba is independence or extermination.

PRELIMINARY ORGANIZATION FOR REVOLT.

Years before the outbreak of the present hostilities the people within and without the island began to organize, with a view of preparing for the inevitable revolution, being satisfied, after repeated and patient endeavors, that peaceful petition was fruitless.

In order that the movement should be strong from the beginning, and organized both as to civil and military administration, the Cuban Revolutionary party was founded, with José Martí at its head. The principal objects were by united efforts to obtain the absolute independence of Cuba, to promote the sympathy of other countries, to collect funds with these objects in view, and to invest them in munitions of war. The military organization of this movement was completed by the election of Maximo Gomez as commander in chief. This election was made by the principal officers who fought in the last revolution.

THE UPRISING.

The time for the uprising was fixed at the solicitation of the people in Cuba, who protested that there was no hope of autonomy, and that their deposits of arms and ammunition were in danger of being discovered and their leaders arrested. A large amount of war material was

then bought by Marti and vessels chartered to transport it to Cuba, where arrangements were made for its reception in the provinces of Santiago, Puerto Principe, and Santa Clara; but at Fernandina, Fla., it was seized by the United States authorities. Efforts were successfully made for the restitution of this material; nevertheless valuable time and opportunity was thus lost. The people in Cuba clamored for the revolution to proceed immediately, and in consequence the uprising was not further postponed. The date fixed for the uprising was the 24th of February. The people responded in Santiago, Santa Clara, and Matanzas. The provinces of Puerto Principe and Pinar del Rio did not respond, owing to lack of arms. In Puerto Principe rigorous search had previous to the 24th been instituted and all arms and ammunition confiscated by the Government. The leaders in the provinces of Matanzas and Santa Clara were imprisoned, and so the movement there was checked for the time being.

On the 27th the Governor-General of the Island of Cuba, Emilio Calleja, issued a proclamation declaring the provinces of Matanzas and Santiago in a state of siege, and fixed a period of eight days within which all those who surrendered were to be pardoned. Under these conditions, on the 3d of March, Juan Gualberto Gomez surrendered, was brought to Havana, and set at liberty, but before he could leave the palace of the Captain-General was rearrested on the ground that he had bought arms for the movement, and was subsequently court-martailed and sent in chains to the Spanish penal colony in Ceuta, Africa.

GROWTH OF THE REVOLUTION.

In the province of Santiago the revolution rapidly increased in strength under the leadership of Bartolome Masso, one of the most influential and respected citizens of Manzanillo; Guillermo Moncada, Jesus Rabi, Pedro Perez, José Miro, and others.

It was characterized by the Spanish Government as a negro and bandit movement, but many of the most distinguished and wealthy white citizens of the district flocked to the insurgent camp.

The Spanish authorities, through some of the Autonomists, attempted to persuade these men to lay down their arms. Gen. Bartolome Masso was twice approached in this behalf, but positively refused to entertain any negotiations which were not based on the absolute independence of Cuba.

On the 1st of April, Generals Antonio and José Maceo, Flor Crombet, and Agustin Cebreco, all veteran leaders in the former revolt, landed at Duaba, in the province of Santiago, and thousands rose to join them. Antonio Maceo then took command of the troops in that province, and on the 11th of April a detachment received Generals Maximo Gomez, José Marti, Francisco Borrerro, and Angel Guerra.

Captain-General Calleja was, on the 16th of April, succeeded by Gen. Arsenio Martinez Campos, the present commander in chief of the Spanish forces, who has the reputation of being Spain's greatest living general.

BATTLES AND CAMPAIGN.

Campos's first plan of campaign was to confine the revolution to the province of Santiago, and he then stated that he would crush the insurgents, establish peace, and return to Spain by the November following.

He asserted that the province of Puerto Principe would never rise in rebellion; and in order to give color to the statement and hope of

labor to the unemployed, he projected a line of railway from Santa Cruz to Puerto Principe, planning also another from Manzanillo to Bayamo.

These two projects, as well as the proposed construction of wharves, were never seriously contemplated. From the very beginning of the uprising, conflicts between the Spanish troops and the Cubans were of daily occurrence, and many engagements of importance also took place, forts being captured, towns taken and raided.

It is of course useless to describe every skirmish in this province; the following are among the most important operations:

Los Negros, where General Rabi defeated the Spanish colonels Santoscildes and Zubikoski; Ramon de las Yaguas, where Colonel Garzon suprised and captured Lieutenant Gallego and 50 men, who were disarmed and permitted to leave unmolested—the troops sent to reinforce the Spaniards being also defeated; El Guanabano, where General Masso and Colonel Estrada forced Santoscildes to retreat to Bayamo, with great loss; Jarahuca, where General Maceo defeated General Salcedo, who had more than 3,000 men under him.

Combined operation of Generals Antonio and José Maceo, who captured the town of Cristo and 200 rifles and 40,000 rounds, while Colonel Garzon took the town of Caney, and Colonel Planas attacked a military convoy on the railroad.

The town of Campechuela was attacked by Colonel Guerra and Colonel Estrada, who forced the garrisons of the two forts to surrender.

Juraguanas, where Colonel Estrada, with 1,000 men, met an equal number of Spanish regulars and defeated them.

Colonel Guerra surprised a Spanish guerrilla under Boeras; made many prisoners, whom he set at liberty.

El Cacao, where General Rabi cut to pieces the Spanish forces under Lieut. Col. U. Sanchez and obtained many rifles and ammunition.

El Jobito: This was one of the most important engagements in the east. It took place near Guantanamo, and Lieutenant Colonel Bach was killed and his troops decimated by Generals Maceo and Perez.

About the middle of July Gen. Martinez Campos, urged by the numerous complaints through the press that the Spanish forces in Bayamo were in a deplorable condition, without food or hospitals, and were cut off from Manzanillo, and wishing by a concerted movement of his lieutenants to crush the revolution at one blow, started from Manzanillo on the 12th for the purpose of relieving Bayamo, and intending thence to march west and drive Gomez into the Spanish military line between the province of Santa Clara and Puerto Principe, thus catching the Cubans between two fires. At the same time three Spanish columns were to march against Maceo and his forces from different directions, and surround and exterminate them. Campos, with 4,800 men under the command of Gen. Fidel Santoscildes, met 3,600 Cubans under Generals Maceo and Rabi on the road to Bayamo at Peralejos.

The battle which followed is known as the battle of Bayamo, Valenzuela, or Peralejo. It lasted eleven hours. General Santoscildes fell in the early part of the engagement, and thereupon Campos himself took command. The Spaniards, completely routed, were forced to kill all their mules and horses to form with them a barricade; left their convoy, the wounded, and dead on the field, and fled in disorder to Bayamo. The loss of the Spaniards was 400 killed and a larger number wounded. The Cubans' was 137 in all. Maceo took care of the Spanish wounded, and sent word to Campos to send a detachment to receive *them, which* was done.

General Campos, on reaching Bayamo, sent for heavy reenforcements, withdrawing a considerable number of troops from the province of Santa Clara.

Generals Roloff, Sanchez, and Rodriguez landed in that province at about this time with a large amount of war material, but not enough, as it proved, to fully arm all those who enthusiastically rushed to join them. Before the Spaniards had extricated Campos from his perilous position, the Cuban forces in the province of Santa Clara had been organized into the Fourth Army Corps, and operations were immediately begun.

Santa Clara is one of the wealthiest provinces in the island, and to protect the interest there large reenforcements were called from Spain, as they could not rely on the Spanish "volunteers." The best proof of this was that 400 Spanish volunteers, under Major Casallas, deserted and joined the Cuban ranks in a body at their first opportunity, taking with them all their arms, ammunitions, and supplies. Here, as in other provinces, skirmishes are of daily occurrence, and many fierce encounters have taken place. Among the most important engagements were the capture of Fort Taguasco by Gen. Serafin Sanchez; Las Varas, where 2,000 Spanish troops under Colonel Rubin were defeated by Generals Roloff and Sanchez; Cantabria, where Colonel Rego took many prisoners and war materials, and the raid and burning of the town of Guinia de Miranda by Colonel Perez, and Cayo Espino, where Colonel Lacret inflicted a severe defeat on the Spaniards under Colonel Molina. A most important part of the work of the forces in Santa Clara, which occupied considerable time and caused many encounters with the enemy, was the destruction of telegraph and telephone communications and railroads, of which there are many lines or branches in this district.

GOMEZ'S CAMPAIGNS.

Immediately on the landing of Generals Martí and Gomez they set out to cross the province of Santiago and enter that of Puerto Principe. It will be remembered that at about this time General Campos arrived in the island with reenforcements of over ten thousand men; the object of Gomez in marching into Puerto Principe was to lead those whom he knew were only expecting his arrival in that province in order to take the field. The citizens of Puerto Principe, or Camaguey, as it is also called, had the reputation of being rather conservative and hence both Spaniards and Cubans waited their determination with great interest.

Gen. Martinez Campos boasted that the inhabitants of Camaguey would never rise in revolt against Spain, but to make assurance doubly sure he placed a cordon of troops numbering about 10,000 on the border between Santiago and Puerto Principe to prevent the entry of Gomez into the latter district. Gomez and Marti started on their westward journey with about 300 men. In trying to pass the first line of troops at Boca de Dos Rios a severe conflict took place May 19, with a greatly superior force in which José Martí was killed. Great joy was manifested by the Spaniards, who claimed that the revolution had received its deathblow in the loss of Martí, but Gomez continued his advance westward, and ordering a feint to be made by Gen. Antonia Maceo at a point in the north of the Spanish cordon, he succeeded in eluding the enemy and entering the southern part of the province of Puerto Principe in the beginning of June. Here he was joined by Salvador Cisneros Betancourt, now the President of the Republic, the most influential Cuban of that province, together with

all the young men of the city, and his forces were rapidly swelled to thousands by additions from all parts of the province. These he subsequently organized into the Third Army Corps.

Thus Gomez was successful in this first campaign of the revolution. Immediately on his arrival in Camaguey he proceeded by a series of rapid cavalry movements to increase his supply of arms and ammunition. He captured and burned Alta Gracia and captured the fort of El Mulato; he cut to pieces a Spanish guerrilla near Las Yeguas. The town and fort of San Jeronimo surrendered to him, and he attacked and raided the town of Cascorro; in all of which places many arms and ammunition as well as prisoners were taken; the latter being invariably released.

During the summer the city of Puerto Principe was constantly menaced in order to allow Gomez to complete his organization of the province.

He was much criticised by Gen. Martinez Campos for his inactivity during the summer, but the Spanish troops nevertheless did not interfere with his plans. Early in July he issued the first of the now famous orders relative to the sugar crop, and announced his intention of marching through Santa Clara and into Matanzas in the winter in order to superintend the carrying out of his decrees, increasing his military stores in the meantime, as well as securing the food supply of his army by corralling the cattle of the province in secure places.

As will be shown further on, General Gomez was upon the establishment of the Government confirmed as commander in chief of the Cuban forces.

In order to carry out his winter campaign he placed Maj. Gen. José Maria Rodriguez in command of the Third Army Corps. The Spaniards explained the wonderful progress of the revolution by the fact that it is impossible for their soldiers to operate during the wet season, and stated that as soon as the winter or dry season set in, or, as it has been expressed by one of her diplomatic representatives, after three days of a northern wind, the Cubans would be driven back from the provinces of Santa Clara and Puerto Principe in the province of Santiago, intending then, by a concentration of their entire fleet at the eastern end of the island, to cut off all basis of supplies and starve the Cubans into submission. At the beginning of the dry season Gomez had perfected all the arrangements of his march to the west; he had ordered Gen. Antonio Maceo with about 4,000 men, mostly infantry, to follow and join him at Sancti Spiritus, on the western boundary of Santa Clara, where Generals Roloff, Sanchez, Perez, and Lacret were waiting, under orders, for the advance of the commander in chief.

Between the provinces of Santa Clara and Puerto Principe there is a line of forts extending from the town of Jucaro to the town of Moron, called the Trocha. To prevent the entrance of Gomez into Santa Clara, Gen. Martinez Campos reenforced their garrisons and placed strong columns along the line to fill up the gaps. General Gomez, with a few hundred men, succeeded by a series of maneuvers into getting through this line and falling upon the town of Pelayo, and captured the forts which guarded it, together with the entire garrison and a large amount of arms and ammunition. He then moved north in the province of Santa Clara, into the district of Remedios, moved west, recrossed the Trocha, and there joined forces with Gen. Antonio Maceo. The latter had marched his soldiers through the entire province of Puerto Principe, although four large Spanish columns were sent to interrupt his progress. These he succeeded in eluding, defeating them, however,

on several occasions. The combined forces of Maceo and Gomez, by a series of strategic movements, again succeeded in passing the Trocha; their rear guard defeating Colonel Segura, inflicting heavy loss and capturing nearly 200 mules laden with arms, ammunition and supplies.

On the arrival of the combined forces in Santa Clara, Gomez, taking charge of all the forces in the district, divided them, sending flying columns in advance under Generals Suarez, Perez, and Lacret, dispatching others to Sagua, in the north, and toward Trinidad, in the south. Maceo's forces made a demonstration on the city of Santa Clara, which was now Martinez Campos's headquarters, while Gomez threatened Cienfuegos. In all the operations which now followed General Gomez had ample forces in his rear, so that his retreat, if made necessary, would not be cut off.

Immediately on the threatening of Cienfuegos Gen. Martinez Campos removed his headquarters from Santa Clara to Cienfuegos, and thence dispatched a large number of troops to form a line between Cienfuegos, Las Cruces, and Lajas, to impede the westward march of the Cuban army. Still advancing westward, and ordering a concentration of his troops, Gomez outflanked the Spanish command, his rear guard distracting their attention and engaging them severely at Maltiempo, in the western part of the province.

On the border of Matanzas Gomez again radiated his troops, Gen. Quintin Bandera on the north, General Maceo in the center, General Gomez himself to the south, while Generals Suarez, Perez, Lacret, and other officers attracted the attention of the enemy by rapid marches and raids. Martinez Campos had again changed his headquarters, this time moving to Colon, in the province of Matanzas; he hoped that the Spanish forces to the rear of the Cubans would be able to cooperate with him, but every means of communication by railroad, telephone, or telegraph had been completely destroyed by the Cubans in their progress, and no word could be sent nor soldiers transported quickly enough for a combined attack of front and rear of the Cubans. From this time on fighting was very sharp, and, as the order of Gomez concerning the grinding of the sugar crop was evidently being disobeyed in Matanzas and Santa Clara, the torch was applied, and it is estimated that a very insignificant part of the sugar crop will be exported this season.

With calls for the protection of the plantations in Santa Clara and Matanzas to attend to, the cities of Santa Clara, Cienfuegos, Matanzas, Cardenas, and Colon threatened, with all communications to the east, except by water, cut off, with the Cuban forces still advancing in oblique directions to the west, Martinez Campos concentrated as many troops as possible, sending to the most easterly province, that of Santiago, all the troops that could be spared from that district, he himself again changing his headquarters with the advance of Gomez to Jovellanos, thence to Limonar, to Matanzas, and finally to Havana, where, at the present writing, he is actively engaged in fortifying the land approaches to the capital, while he has hurried to the neighborhood of Batabano as many troops as could be spared, withdrawing even a large number of the marines from the fleets, thus assigning them to shore duty. Even the line at Batabano has been broken by the Cuban forces, and all communications to the east have been cut off.

So grave has the situation become that martial law has been proclaimed in the provinces of Havana and Pinar del Rio, so that the entire island from Point Maysi to Cape Antonio is now declared to be in a state of siege. The censorship of the press has been made more rigid than ever, and an order issued for the delivery of all horses in the

island to the Spanish Government at prices ranging from $18 to $35. It is not intended to pay for these in cash, as only certificates of the delivery of the horses to the Government with the value of the animal as fixed by the latter are given to the owners. Either this is an extreme war measure taken only because of absolute necessity and of the scarcity of money, or it is another example of the gentle methods of the Spanish Government in its treatment of the Cuban and his property.

While the westward march of Gomez was in progress Gens. Francisco Carrillo and José M. Aguirre landed on the eastern end of the island with a considerable supply of munitions, including some artillery, and succeeded in marching through the provinces of Santiago and Puerto Principe into that of Santa Clara, capturing several forts on the way. General Carrillo has taken command in the Remedios district, where his personal popularity has caused thousands to join him. General Aguirre reported to the commander in chief, and is now assisting in the operations of Matanzas.

It was not the intention of General Gomez when he planned his winter campaign to march on and lay siege to the capital, his only object being to prevent the grinding and export of the sugar crop and the consequent flow of treasure into the Spanish coffers, and to demonstrate to the world that he could control the provinces and enforce his orders.

While this march of the main bodies of troops westward has been carried on, the Cuban forces of the other army corps have also succeeded in carrying out the orders concerning sugar cane and preventing the establishment of Spanish lines of communication. As artillery has now been introduced into the Cuban army, forts are more easily taken. There has been constant communication from the interior to the coast; vessels of the Spanish navy have frequently been engaged by the insurgents., and in one case a small armed coast-guard vessel was captured by them

Supplies are received by the Cubans at convenient points on the coast and transferred to the interior. When it is remembered that in the revolution of 1861 to 1878 there were never more than 10,000 armed insurgents in the field; that these rarely, if ever, took the offensive, and yet compelled Spain to maintain an army of 120,000 men in the field, many of whom were Cuban volunteers in the strict sense of the term; that this little band caused Spain to spend in the ten years over $700,000,000 and to lose over 200,000 men, and that when in contrast we see in this revolution there are already more than 50,000 Cubans in the field, directed by veterans of the last war, who now are on the offensive, and that now Cuban does not fight against Cuban, the chance of ultimate success of the Cuban arms must appear to an impartial observer, especially in the light of Gomez's wonderful western march, and that in two months more the climate will again militate against the Spanish troops.

MILITARY ORGANIZATION.

The military organization of the Cubans is ample and complete.

Maj. Gen. Maximo Gomez is the commander in chief, as we have said, of all the forces, a veteran of the last revolution, as indeed are all the generals almost without exception. Maj. Gen. Antonio Maceo is second in command of the army of liberation, and was, until called upon to cooperate with the commander in chief in the late march to the western province, in command of Santiago.

The army is at present divided into five corps—two in Santiago, one *in Puerto* Principe, and two in Santa Clara and Matanzas. These corps

are divided into divisions, these again into brigades, and finally into regiments; the forces are moreover divided into cavalry and infantry, besides having engineers, and lately artillery and a perfect sanitary corps, which latter is in command of Eugenio Sanchez Agramonte, with the grade of brigadier-general. Maj. Gen. José Maceo commands the First Santiago Corps, while Maj. Gen. Bartolome Masso commands the Second Corps in that province.

Commanding divisions and brigades in these two corps are Brig. Gens. Pedro Perez, Agustin Cebreco, Jesus Rabi, Luis Feria, Bernardo Capote, Higinio Vasquez, and Angel Guerra.

The Third Corps is in command of Maj. Gen. José M. Rodriguez. The Fourth Corps is in command of Maj. Gen. Cartos Roloff, the divisions and brigades being commanded by Maj. Gens. Francisco Carrillo and Serafin Sanchez and Brig. Gens. Tranquilino Perez, Juan B. Zayas, and Rogelio Castillo. The Fifth Corps is in command of Maj. Gen. Manuel Suarez, and the divisions and brigades are commanded by Francisco Perez, José Lacret, and José M. Aguirre.

The first two corps consist of 26,000 men, mostly infantry; the third, of about 4,000 men, mostly cavalry; the Fourth and Fifth Corps consisted before the late invasion of Gomez of over 20,000 men, both infantry and cavalry, which force has been considerably increased in these last days. Of the 50,000 men that there are at least in the field, more than half are fully armed and equipped, the rest carrying miscellaneous weapons or side arms.

The work of fully equipping the army is now proceeding rapidly. The higher grades and commissions are all confirmed by the Government.

Stations for the manufacture of powder and the reloading of cartridges are established, as well as manufacturing of shoes, saddles, and other equipments. The hospitals for the sick and wounded are also provided. Red Cross societies have offered their cooperation, but the Spanish commander in chief has refused to allow them to enter the insurgent lines.

The discipline of the army is strict and marauding is promptly punished, as was done in the case of Lieut. Alberto Castillo, an officer of the Second Corps, who was tried and shot for robbery, and as has been repeatedly done with the "Plateados," men who, taking advantage of the unsettled condition of affairs in the country, have turned bandits. The Cuban Army of Liberation is entirely volunteer, without pay.

CIVIL GOVERNMENT.

As above indicated, José Martí was the head of the preliminary civil organization, and he, immediately upon landing with Gomez in Cuba, issued a call for the selection of representatives of the Cuban people to form a civil government.

His death postponed for a time the selection of these men, but in the beginning of September the call previously issued was complied with.

Representatives from each of the provinces of Santiago, Puerto Principe, Santa Clara, and the western part of the island, comprising the provinces of Matanzas and Havana, making twenty in all, were elected to the constituent assembly, which was to establish a civil government, republican in form.

A complete list of the members of the constituent assembly which met at Jimaguayu, in the province of Puerto Principe, on the 13th of September, 1895, together with an account of its organization and subsequent action, will be found in the document hereto annexed and marked B.

A constitution of the Republic of Cuba was adopted on the 16th of September, and copy of which will be found in document annexed marked B.

On the 18th of September the following officers of the Government were elected by the constituent assembly in accordance with the terms of the constitution:

President, Salvador Cisneros Betancourt, of Puerto Principe; vice-president, Bartolome Masso, of Manzanillo; secretary of war, Carlos Roloff, of Santa Clara; secretary of the treasury, Severo Pina, of Sancti Spiritus; secretary of the interior, Santiago Garcia Canizares, of Remedios; secretary of foreign relations, Rafael M. Portuondo, of Santiago de Cuba; subsecretary of war, Mario Menocal, of Mantanzas; subsecretary of the treasury, Joaquin Castello, of Santiago de Cuba; subsecretary of the interior, Carlos Dubois, of Baracoa; subsecretary of foreign relations, Fermin Valdes Dominguez, of Havana.

The installation of these officers duly followed. The election of the general in chief and the second in command, who is to bear the title of lieutenant-general, was then had, and resulted in the unanimous election of Maximo Gomez and Antonio Maceo, respectively.

On the same day the constituent assembly elected by acclamation as delegate plenipotentiary and general agent abroad of the Cuban Republic, the undersigned, Tomas Estrada Palma. The credentials issued to me are hereto annexed, marked C.

Immediately thereafter the government council proceeded to the headquarters of General Gomez, in Puerto Principe, where the latter took the oath of allegiance to the constitution of the Republic, together with his troops, who there gathered for this purpose, and was installed as commander in chief of the armies of the Republic.

The government council then proceeded to the province of Santiago, where Gen. Antonio Maceo and his forces took the oath of allegiance.

Thence the council proceeded to the province or Santa Clara to inspect and administer the oath to the troops of the Fourth and Fifth Army Corps. They are now on their way to the province of Santiago, where their permanent headquarters will be established.

The divisions of the provinces into prefectures under the supervision of the secretary of the interior and the duties which devolve in this department are fully set forth in Exhibit B, as well as the duties of the secretary of the treasury. The impositions, rate and collection of the taxes, and sources of income of the Government will also be found in Exhibit B.

All moneys collected in accordance with the laws of the Republic, as well as those received through voluntary contributions, are delivered to him or his duly authorized agent and expended under his supervision or that of his agents, to supply the present needs of the Government, which are mainly purchase of arms and ammunition.

The money thus collected has been sufficient to equip the army and keep it supplied with ammunition, although, as it is natural, from the rapid increase of the ranks and the difficulty of bringing supplies into the island, many of the new recruits have not yet been fully armed. The problem of equipping the army is not a financial one, but arises from the caution necessary to blockade running and, above all, the preventive measures taken by foreign Governments, and the notice which is in all cases given to the enemy of the embarkment of munitions. No report of the secretary of the treasury has yet been made, as he has been in office but three months.

For the purpose of properly collecting the imposts the roads to all *cities, as well as the* coast, are patrolled by the Cubans. The Cuban

Government publishes two newspapers, El Cubano Libre and the Boletin de la Guerra.

TREATMENT OF PRISONERS.

From the beginning of this insurrection the conduct of the Cubans as to prisoners has been in strong contrast to that of the Spaniards; prisoners taken by the Cubans have been invariably well treated, cared for, and liberated, officers as well as common soldiers, as soon as it was possible under the circumstances, and word sent to the Spanish officers to call for them on the guaranty that the detachment would be respected.

As instances we may recite those even admitted by the Spaniards, namely: Ramon de las Yaguas, Campechuela, and Peralejos, in Santiago; el Mulato, San Jeronimo, and Las Minas, in Puerto Principe; Taguasco, Pelayo, and Cantabria, in Santa Clara. After the last-mentioned engagement Colonel Rego returned his prisoners to the Spanish lines, obtaining a receipt for their delivery signed by a lieutenant, of which a copy is hereto annexed, marked D.

This action, in accordance with the spirit of the insurrection, which is declared not to be against the Spaniards, of whom many are fighting for the independence of the island, but against the Spanish Government, is echoed by the general order of the commander in chief on this subject, of which the following is a copy:

CIRCULAR OF THE GENERAL IN CHIEF.

GENERAL HEADQUARTERS OF THE ARMY OF LIBERATION,
Camaguey, August 1, 1895.

In order to establish in a clear and precise manner the mode of procedure toward the chiefs, officers, and soldiers of the monarchy captured in action or operations, and toward those who voluntarily surrender to our columns or authorities, I have deemed it convenient to order as follows:

ART. 1. All prisoners captured in action or by the troops of the Republic will be immediately liberated and returned to their ranks, unless they volunteer to join the army of liberation. The abandoned wounded will be gathered and attended to with all care, and the unburied dead interred.

ART. 2. All persons who shall be arrested, charged with committing the misdemeanors in the circular of July 1, by violating or disregarding the said order, will be summarily proceeded against.

ART. 3. Those of the prisoners who are chiefs or officers of the army of the monarchy will be respected and considered according to their rank and treated according to the valor with which they may have resisted, and will all be returned to their ranks if they so desire.

ART. 4. Those who volunteer to join the ranks of the republicans, and appear before our columns and authorities, will have their option in the mode of serving the cause of the Republic, either in arms or by more peaceful occupations, civil or agricultural pursuits.

I communicate this to you for your instruction and for your rigid compliance. Country and liberty.

MAXIMO GOMEZ,
The General in Chief.

On the part of the Spanish, attention is called to the order prohibiting newspaper correspondents from entering insurgent lines to prevent accurate information being given to the world at large; the order to shoot all who supply food or medicines to the insurgents; the order, which in every instance has been carried out, to shoot all officers of the Cuban army who may be captured, under which Domingo Mujica, Gil Gonzalez, Quirina Amezago, and Acebo have been executed. At the recapture of Baire, old men, women, and children were ruthlessly slaughtered by the Spanish soldiery, the hospital at Gran Piedra was

captured and over seventy wounded and defenseless Cubans were killed; at Cayo Espino peaceful men and women were butchered by Colonel Molina and the outrages committed by the troops under Garrido and Tejera are legion. The action of convicts, who have been liberated by Spain to fight the Cubans under such leadership as that of the notorious Lola Benitez, who bears the title of colonel, are, as might be expected, a blot on any Christian army.

As to the treatment of Cubans suspected of sympathy with the insurgents, we have but to consider the large number of men who have lately been arrested and on bare suspicion summarily sent to the Spanish penal colonies for life; some foreign citizens have indeed escaped court martial on the interference of their Governments, but it is well known that even civil trials at this time are under the absolute control of the Government.

NOT A NEGRO MOVEMENT.

The Spaniards charge, in order to belittle the insurrection, that it is a movement of negroes. It should be remembered that not more than one-third of the entire population are of the colored race. As a matter of fact, less than one-third of the army are of the colored race. Take, for instance, the generals of corps, divisions, and brigades; there are but three of the colored race, namely, Antonio and José Maceo and Augustin Cebreco, and these are mulattoes whose deeds and victories have placed them far above the generals of those who pretend to despise them. None of the members of the constituent assembly or of the Government are of the colored race. The Cubans and the colored race are as friendly in this war as they were in times of peace, and it would indeed be strange if the colored people were not so, as the whites fought for and with them in the last revolt, the only successful purpose of which was the freedom of the slaves.

If it be true that this is merely a movement of bandits and negroes and adventurers, as the Spaniards assert, why have they not armed the Cuban people to fight against the outlaws, or why have not the Cuban people themselves volunteered to crush this handful? On the contrary, they know that giving those Cubans arms who have them not would be but to increase the number of insurgents, and they have therefore sent more than 125,000 troops from Spain, mostly conscripts; they have sent over forty of their most famous generals; they have increased their navy, and virtually, so far as the Cubans are concerned, blockaded the entire coast. They have been compelled to make many onerous loans to carry on the campaign; they have increased the fortifications of their ports; they have brought torpedoes to protect their harbors, and they have even placed armed troops on their mail steamers to prevent their capture.

Besides this large army, they have between 60,000 and 80,000 volunteers to protect their towns. These volunteers, so called, are native Spaniards and a branch of the regular army, the service being compulsory; that is, instead of serving in the regular army at home, where their entire time must be given up, they volunteer to enter this body on emigration to Cuba, where they may follow to a considerable extent their occupation; in other words, they correspond to our home guards or militia, except that the service is obligatory and that the men can not leave the island without permission.

It is not denied that a large number of what the Spaniards term the lower classes are in this revolution, but this is only a proof of how deep *into the mass of the* people have been implanted the seeds of discon-

tent and of republicanism. This is a movement not like our last revolution—the result of the agitation of the wealthy and the educated—but one which is the outcome of the popular sentiment of all classes.

Much surprise has been expressed that with the immense army and resources at hand Spain has not been able to crush the insurrection or prevent its rapid growth. Aside from the climate, which is deadly to the raw, ill-fed, ill-clothed, ill-treated, and badly paid Spanish troops, the greater part of whom are mere lads, the Spaniards have to divide their troops into an army of occupation and another of operation. These must necessarily move in considerable numbers, because if compelled to flee without a knowledge of the intricacies of the country they would be decimated.

A Cuban command on dispersion is readily reorganized, as each man is his own guide. This is one of the most valuable of Cuban movements—to disperse as if routed, to rally at a previously agreed point, and then to fall upon and surprise the seemingly victorious enemy. The Cuban, used to the country and the climate, marches and rides much faster than the Spaniard. He can live and thrive, and does so in necessity, on food that is death to the Spanish soldier. Moreover in a friendly country the movements of the enemy are readily ascertained by the Cuban general, who can thus select his own position or evade the engagement, while the Spanish are never so well informed and are at the mercy of their guides.

It must be remembered that the Cuban fights for the noblest principle of man—independence. That he does so without compulsion or pay, but spontaneously and enthusiastically—nay, he fights the battle of despair, knowing it is better to be killed thus than to bear the tortures of a Spanish prison or to trust himself to the tender mercy of a Spanish commander. On the other hand, the Spanish troops fight by compulsion and for pay, which is even now months in arrears; they fight without faith, for their heart is not with their cause. They know that surrender means pardon and good treatment, while fighting may mean death. Hundreds of Spanish soldiers have singly or in groups gone over to the insurgent lines, being satisfied that they would live there under better conditions.

CHARACTER OF THE WAR.

There was also an attempt made by the Spanish to brand the Cubans with carrying on an uncivilized warfare because of their use of dynamite. General Roloff before using this explosive issued a proclamation warning all persons of the danger of traveling by rail. Dynamite has been used freely, but only as a substitute for gunpowder in the destruction of railroad bridges, trestles, and trains which could be used and were used for the transportation of Spanish troops. Of course it is a serious loss to Spain to have these railroads destroyed, but no one can seriously deny that it is a measure justified by the necessities of war. The use of this explosive as a substitute for gunpowder in the operation of mines is simply a proof that the Cubans are keeping pace with the advance of inventions in the art of war.

DESTRUCTION OF PROPERTY.

The subject, however, which has caused probably the most discussion is the order of General Gomez to prevent the grinding of sugar cane and in case of *the disobedience of said order* the destruction of the crop.

General Gomez issued a preliminary warning dated July 1, of which the following is a copy:

GENERAL HEADQUARTERS OF THE ARMY OF LIBERATION,
Najasa, Camaguey, July 1, 1895.

To the Planters and Owners of Cattle Ranches:

In accord with the great interests of the revolution for the independence of the country and for which we are in arms:

Whereas all exploitations of any product whatsoever are aids and resources to the Government that we are fighting, it is resolved by the general in chief to issue this general order throughout the island that the introduction of articles of commerce, as well as beef and cattle, into the towns occupied by the enemy, is absolutely prohibited. The sugar plantations will stop their labors, and whosoever shall attempt to grind the crop notwithstanding this order, will have their cane burned and their buildings demolished. The person who, disobeying this order, will try to profit from the present situation of affairs, will show by his conduct little respect for the rights of the revolution of redemption and therefore shall be considered as an enemy, treated as a traitor, and tried as such in case of his capture.

MAXIMO GOMEZ,
The General in Chief.

Nevertheless throughout the country preparations were made for the grinding of the crop. A peremptory order, of which the following is a copy, was then issued on November 6:

HEADQUARTERS OF THE ARMY OF LIBERATION,
Territory of Sancti Spiritus, November 6, 1895.

Animated by the spirit of unchangeable resolution in defense of the rights of the revolution of redemption of this country of colonists, humiliated and despised by Spain, and in harmony with what has been decreed concerning the subject in the circular dated the 1st of July, I have ordered the following:

ARTICLE I. That all plantations shall be totally destroyed, their cane and outbuildings burned, and railroad connections destroyed.

ART. II. All laborers who shall aid the sugar factories—these sources of supplies that we must deprive the enemy of—shall be considered as traitors to their country.

ART. III. All who are caught in the act, or whose violation of Article II shall be proven, shall be shot. Let all chiefs of operations of the army of liberty comply with this order, determined to unfurl triumphantly, even over ruin and ashes, the flag of the Republic of Cuba.

In regard to the manner of waging the war, follow the private instructions that I have already given.

For the sake of the honor of our arms and your well-known courage and patriotism, it is expected that you will strictly comply with the above orders.

M. GOMEZ, *General in Chief.*

To the chiefs of operations: Circulate this.

On the 11th of November the following proclamation was issued:

HEADQUARTERS OF THE ARMY OF LIBERATION,
Sancti Spiritus, November 11, 1895.

To honest men, victims of the torch:

The painful measure made necessary by the revolution of redemption drenched in innocent blood from Hatuey to our own times by cruel and merciless Spain will plunge you in misery. As general in chief of the army of liberation it is my duty to lead it to victory, without permitting myself to be restrained or terrified, by any means necessary to place Cuba in the shortest time in possession of her dearest ideal. I therefore place the responsibility for so great a ruin on those who look on impassively and force us to those extreme measures which they then condemn like dolts and hypocrites that they are. After so many years of supplication, humiliations, contumely, banishment, and death, when this people, of its own will, has arisen in arms, there remains no other solution but to triumph, it matters not what means are employed to accomplish it.

This people can not hesitate between the wealth of Spain and the liberty of Cuba. Its greatest crime would be to stain the land with blood without effecting its purposes because of puerile scruples and fears which do not concur with the character of the men who are in the field, challenging the fury of an army which is one of the bravest in the world, but which in this war is without enthusiasm or faith, ill fed and unpaid. The war did not begin February 24; it is about to begin now.

The war had to be organized; it was necessary to calm and lead into the proper channels the revolutionary spirit always exaggerated in the beginning by wild enthusiasm. The struggle ought to begin in obedience to a plan and method more or less studied, as the result of the peculiarities of this war. This has already been done. Let Spain now send her soldiers to rivet the chains of her slaves; the children of this land are in the field, armed with the weapons of liberty. The struggle will be terrible, but success will crown the revolution and efforts of the oppressed.

MAXIMO GOMEZ, *General in Chief.*

The reasons underlying this measure are the same which caused this country to destroy the cotton crop and the baled cotton in the South during the war of the secession.

The sugar crop is a source of large income to the Spanish Government, directly by tax and export duty, as well as indirectly. The action of the insurgents is perfectly justified, because it is simply a blockade, so to speak, on land—a prevention of the gathering, and hence the export, of the commodity with, naturally, a punishment for the violation thereof.

PROTESTS OF ALIENS.

Strenuous protests have, too, been made by and on behalf of aliens residing in or having property in Cuba.

It is admitted in civilized warfare that the property of alien residents, whether they are in sympathy with the enemy or not, when in the track of war, is subject to war's casualties, and that all property which might be of aid and comfort to the enemy may be taken or destroyed, the commander in the field being the judge of the exigency and necessities which dictate such action. This proposition has been laid down by the State Department and the Supreme Court of this country in the matter of the destruction of cotton in the late war.

The provision of the constitution of the Republic of Cuba that the citizens of a country which acknowledges the Cubans as belligerents, shall be exempt from the payment of taxes and contributions to the Republic, naturally implies that the property of such citizens after the granting of belligerency by their country, even though by all the laws of war it is contraband and may be seized or destroyed, will be absolutely respected, and, I have all reason to assert, will be under the special protection of the Cuban Government and its army.

For aliens to ask this protection as a right while their Government denies the existence of the belligerency of the Cubans might well be considered by the latter as allowing aid and comfort to go to their enemy, simply on the expectation that some time in the future the Government of those aliens may, out of gratitude to the Cubans, acknowledge, what is after all but a state of fact, belligerency. In the meantime the aid and comfort thus allowed by the Cubans to flow to the Spaniards must strengthen the latter and thus draw out the struggle or weaken the former. General Gomez explains the importance of this measure in the following letter:

DISTRICT OF REMEDIOS,
Province of Santa Clara, December 8, 1895.

To TOMAS ESTRADA PALMA.

MY DEAR AND ESTEEMED FRIEND: It is not long since I wrote you, but an opportunity offers by which I may send you a few words of encouragement and good cheer. Rest assured I write you whenever I can, which is not often, owing to the great amount of work which at present falls upon my shoulders. I know the pen is mightier than the sword, but my mission at present is with the latter; others must wield the pen.

Eight days ago Gen. Antonio Maceo and myself met and fought the enemy with our forces in conjunction. *The Spanish column,* including infantry, cavalry, and

artillery were our superiors in number, but the arms of the Cuban Republic were again victorious. I have not time at present to go into details of the battle, they will follow later. Suffice it to say, Spanish reports to the contrary notwithstanding, we won the day.

Our advance may be slow, but it will be sure and firm. If you hear of our retreat remember that it will be temporary and for a purpose. Our faces are turned toward the west and nothing will stop us. The result of my observations as we proceed is that the Spaniards are in need of almost everything—money, sympathy, soldiers, and even leaders who have faith and courage in the righteousness of their cause.

If Cuban valor and resolution do not fail us, and if the hearts of Cuba's children do not weaken, I have every reason to believe that the close of the six months' campaign now initiated will find everything satisfactorily settled and Cuba free.

I know that unfavorable comment has been made on some of the methods we have been forced to employ in this revolution, but it will not do to listen to the complaints of the superficial and irresponsible. No sugar crop must be made this winter under any circumstances or for any amount of money. It is the source from which the enemy still hopes and dreams of obtaining its revenue. To prevent that end, for the good of our country, has been and shall be our programme.

We are Cubans and have one great aim in view, one glorious object to obtain—the freedom of our country and liberty. It is of more importance to us than glory, public applause, or anything else. Everything else will follow in time. I have never believed in or advised a sanguinary revolution, but it must be a radical one. First of all we must triumph; toward that end the most effective means, although they may appear harsh, must be employed.

There is nothing so bad, so dishonorable, so inexcusable, in the eyes of the world as failure. Victory is within our reach. To hesitate, to delay it, to endanger it now, would be stupid, would be cowardly, would be criminal. We will succeed first; the applause of the world will follow. To do otherwise would be not to love one's country. I have never felt more confident than at the present moment. You can rest assured that Cuba will soon achieve her absolute independence.

Ever your true friend, MAXIMO GOMEZ.

As I have through various sources been approached on this subject in behalf of property of American citizens on the island, and as I know the cordial friendship which the Cubans bear to the Government and people of the United States of America, feeling assured that this country, from its very history, must likewise feel a deep sympathy with a people who are treading in their footsteps, I have written to the Government of the Republic of Cuba the following letter:

NEW YORK, *December 23, 1895.*

SALVADOR CISNEROS BETANCOURT,
President of the Cuban Republic.

MY DISTINGUISHED FELLOW-COUNTRYMAN: There have been many complaints made to me from various sources that the property of citizens of the United States of North America has been destroyed by our army of liberation in Cuba under the order of our distinguished general in chief, Maximo Gomez. I know very well how you and all my countrymen feel toward this Republic, and that you desire to do everything in your power to demonstrate your friendship, and I deem it my duty to communicate the above facts to you so that you may consider the matter carefully and thoroughly; at the same time I know that many Spaniards intend to transfer their property, as some have done already, to American citizens or companies especially organized for their purposes, in case that you should, before or after receiving the rights of belligerents, take active measures for the protection of North American interests.

I say this because I am sure that, at least after the granting of belligerency, you will do your utmost to guard the interests of the citizens of a country which warmly sympathizes with us in our present struggle.

Hoping that you will give this subject your most thoughtful consideration, I remain your devoted friend, for country and liberty,

T. ESTRADA PALMA.

In view of the history of this revolution as herein stated, in view of the causes which led to it, its rapid growth, its successes in arms, the establishment, operation, and resources of the Government of the Cuban Republic, the organization, number, and discipline of its army, the *contrast in the* treatment of prisoners to that of the enemy, the territory *in its control* and subject to the carrying out of its decrees, of

the futility of the attempts of the Spanish Government to crush the revolution, in spite of the immense increase of its army in Cuba and of its blockade and the many millions spent for that purpose, the cruelties which on the part of the Spanish have especially characterized this sanguinary and fiercely conducted war, and the damage to the interests of the citizens of this country under the present conditions, I, as the duly accredited representative, in the name of the Cuban people in arms who have fought singly and alone against the monarchy of Spain for nearly a year, in the heart of a continent devoted to republican institutions, in the name of justice, in the name of humanity, in the name of liberty, petition you, and through you the Government of the United States of America, to accord the rights of belligerency to a people fighting for their absolute independence.

Very respectfully, yours,

T. ESTRADA PALMA.

The Hon. RICHARD OLNEY,
Secretary of State of the United States of America.

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CUBA v. SPAIN.

War is a dire necessity. But when a people has exhausted all human means of persuasion to obtain from an unjust oppressor a remedy for its ills, if it apeals as a last resource to force in order to repel the persistent aggression which constitutes tyranny, this people is justified before its own conscience and before the tribunal of nations.

Such is the case of Cuba in its wars against Spain. No metropolis has ever been harsher or more obstinately harassing; none has ever exploited a colony with more greediness and less foresight than Spain. No colony has ever been more prudent, more long-suffering, more cautious, more persevering than Cuba in its purpose of asking for its rights by appealing to the lessons of experience and political wisdom. Only driven by desperation has the people of Cuba taken up arms, and having done so, it displays as much heroism in the hour of danger as it had shown good judgment in the hour of deliberation.

The history of Cuba during the present century is a long series of rebellions; but every one of these was preceded by a peaceful struggle for its rights—a fruitless struggle because of the obstinate blindness of Spain.

There were patriots in Cuba from the beginning of this century, such as Presbyter Caballero and Don Francisco Arango, who called the metropolitan Government's attention to the evils of the colony, and pointed to the remedy by pleading for the commercial franchises required by its economical organization, and for the intervention of the natives in its government, not only as a right, but also for political expediency, in view of the long distance between the colony and the home government, and the grave difficulties with which it had to contend. The requirements of the war with the continental colonies, which were tired of Spanish tyranny, compelled the metropolitan Government to grant a certain measure of commercial liberty to the Island of Cuba; a temporary concession which spread prosperity throughout its territory, but which was not sufficient to open the eyes of the Spanish statesmen. On the contrary, prompted by suspicion and mistrust of the Americans, they began by curtailing, and shortly after abrogated the limited administrative powers then possessed by some of the corporations in Cuba, such as the "Junta de Fomento"—(a board for the encouragement of internal improvements).

As if this were not enough, the Cubans were deprived of the little show of political intervention they had in public affairs. By a simple royal decree in 1837 the small representation of Cuba in the Spanish Cortes was suppressed, and all the powers of the Government were concentrated in the hands of the captain-general, on whom authority was conferred to act as the governor of a city in a state of siege. This implied that the captain-general, residing in Habana, was master of the life and property of every inhabitant of the island of Cuba. This meant that Spain declared a permanent state of war against a peaceful and defenseless people.

Cuba saw its most illustrious sons, such as Heredia and Saco, wander in exile throughout the free American Continent. Cuba saw as many of the Cubans as dared to love liberty and declare it by act or word die on the scaffold, such as Joaquin de Aguero and Placido. Cuba saw the product of its people's labor confiscated by iniquitous fiscal laws imposed by its masters from afar. Cuba saw the administration of justice in the hands of foreign magistrates, who acted at the will or the whim of its rulers. Cuba suffered all the outrages that can humiliate a conquered people, in the name and by the work of a Government that sarcastically calls itself paternal. Is it to be wondered, then, that an uninterrupted era of conspiracies and uprisings should have been inaugurated? Cuba in its despair took up arms in 1850 and 1851, conspired again in 1855, waged war in 1868, in 1879, in 1885, and is fighting now since the 24th of February of the present year.

But at the same time Cuba has never ceased to ask for justice and redress. Its people, before shouldering the rifle, pleaded for their rights. Before the pronunciamento of Aguero and the invasions of Lopez, Saco, in exile, exposed the dangers of Cuba to the Spanish statesmen, and pointed to the remedy. Other farsighted men seconded him in the colony. They denounced the cancer of slavery, the horrors of the traffic in slaves, the corruption of the officeholders, the abuses of the Government, the discontent of the people with their forced state of political tutelage. No attention was given to them, and this brought on the first armed conflicts.

Before the formidable insurrection of 1868, which lasted ten years, the reform party, which included the most enlightened, wealthy, and influential Cubans, exhausted all the resources within their reach to induce Spain to initiate a healthy change in her Cuban policy. The party started the publication of periodicals in Madrid and in the island, addressed petitions, maintained a great agitation throughout the country, and having succeeded in leading the Spanish Government to make an inquiry into the economical, political, and social condition of Cuba, they presented a complete plan of government which satisfied public requirements as well as the aspirations of the people. The Spanish Government disdainfully cast aside the proposition as useless, increased taxation, and proceeded to its exaction with extreme severity.

It was then that the ten-year war broke out. Cuba, almost a pigmy compared with Spain, fought like a giant. Blood ran in torrents. Public wealth disappeared in a bottomless abyss. Spain lost 200,000 men. Whole districts of Cuba were left almost entirely without their male population. Seven hundred millions were spent to feed that conflagration—a conflagration that tested Cuban heroism, but which could not touch the hardened heart of Spain. The latter could not subdue the bleeding colony, which had no longer strength to prolong the struggle with any prospect of success. Spain proposed a compact which was a snare and a deceit. She granted to Cuba the liberties of Puerto Rico, which enjoyed none.

On this deceitful ground was laid the new situation, throughout which has run a current of falsehood and hypocrisy. Spain, whose mind had not changed, hastened to change the name of things. The capitan-general was called governor-general. The royal decrees took the name of authorizations. The commercial monopoly of Spain was named coasting trade. The right of banishment was transformed into the law of vagrancy. The brutal attacks of defenseless citizens were called "compoute." The abolition of constitutional guarantees became the law of public order. Taxation without the consent or knowledge of the Cuban people was changed into the law of estimates (budget) voted by the representatives of Spain; that is, of European Spain.

The painful lesson of the ten-year war had been entirely lost on Spain. Instead of inaugurating a redeeming policy that would heal the recent wounds, allay public anxiety, and quench the thirst for justice felt by the people, who were desirous to enjoy their natural rights, the metropolis, while lavish in promises of reform, persisted in carrying on unchanged its old and crafty system, the groundwork of which continues to be the same, namely: To exclude every native Cuban from every office that could give him any effective influence and intervention in public affairs; the ungovernable exploitation of the colonists' labor for the benefit of Spanish commerce and Spanish bureaucracy, both civil and military. To carry out the latter purpose it was necessary to maintain the former at any cost.

I.

In order to render the native Cuban powerless in his own country, Spain, legislating for Cuba without restriction as it does, had only to give him an electoral law so artfully framed as to accomplish two objects: First, to reduce the number of voters; second, to give always a majority to the Spaniards; that is, to the European colonists, notwithstanding that the latter represent only 9.3 per cent of the total population of Cuba. To this effect it made the electoral right dependent on the payment *of a very high poll tax,* which proved the more burdensome as the war had ruined the

larger number of Cuban proprietors. In this way it succeeded in restricting the right of suffrage to only 53,000 inhabitants in an island which has a population of 1,600,000; that is to say, to the derisive proportion of 3 per cent of the total number of inhabitants.

In order to give a decided preponderance to the Spanish European element, the electoral law has ignored the practice generally observed in those countries where the right to vote depends on the payment of a poll tax, and has afforded all the facilities to acquire the electoral privilege to industry, commerce, and public officials, to the detriment of the territorial property (the ownership of real estate). To accomplish this, while the rate of the territorial tax is reduced to 2 per cent, an indispensable measure, in view of the ruinous condition of the landowners, the exorbitant contribution of $25 is required from those who would be electors as freeholders. The law has, moreover, thrown the doors wide open for the perpetration of fraud by providing that the simple declaration of the head of a commercial house is sufficient to consider all its employees as partners, having, therefore, the right to vote. This has given us firms with thirty or more partners. By this simple scheme almost all the Spaniards residing in Cuba are turned into electors, despite the explicit provisions of the law. Thus it comes to pass that the municipal district of Güines, with a population of 13,000 inhabitants, only 500 of which are Spaniards and Canary Islanders, shows on its electoral list the names of 32 native Cubans and of 400 Spaniards—only 0.25 per cent of the Cuban to 80 per cent of the Spanish population.

But, as if this were not enough, a so-called permanent commission of provincial deputations decides every controversy that may arise as to who is to be included in or excluded from the list of electors, and the members of this commission are appointed by the Governor-General. It is unnecessary to say that its majority has always been devoted to the Government. In case any elector considers himself wronged by the decision of the permanent commission he can appeal to the "audiencia" (higher court) of the district, but the "audiencias" are almost entirely made up of European magistrates; they are subject to the authority of the Governor-General, being mere political tools in his hands. As a conclusive instance of the manner in which those tribunals do justice to the claims of the Cuban electors, it will be sufficient to cite a case which occurred in Santa Clara in 1892, where 1,000 fully qualified liberal electors were excluded at one time, for the simple omission to state their names at the end of the act presented by the elector who headed the claim. In more than one case has the same "audiencia" applied two different criterions to identical cases. The "audiencia" of Havana, in 1887, ignoring the explicit provisions of the law, excused the employees from the condition of residence, a condition that the same tribunal exacted before. The same "audiencia" in 1885 declared that the contributions to the State and to the municipality were accumulative, and in 1887 decided the opposite. This inconsistency had for its object to expunge from the lists hundreds of Cuban electors. In this way the Spanish Government and tribunals have endeavored to teach respect for the law and for the practice of wholesome electoral customs to the Cuban colonists.

It will be easily understood now why on some occasions the Cuban representation in the Spanish Parliament has been made up of only three deputies, and in the most favorable epochs the number of Cuban representatives has not exceeded six. Three deputies in a body of four hundred and thirty members! The genuine representation of Cuba has not reached sometimes 0.96 per cent of the total number of members of the Spanish congress. The great majority of the Cuban deputation has always consisted of Spanish peninsulars. In this manner the ministers of "ultramar" (ministers of the colonies), whenever they have thought necessary to give an honest or decent appearance to their legislative acts by an alleged majority of Cuban votes, could always command the latter—that is, the peninsulars.

As regards the representation in the senate, the operation has been more simple still. The qualifications required to be a senator have proved to be an almost absolute prohibition to the Cubans. In fact, to take a seat in the higher house it is necessary to have been president of that body or of congress, or a minister of the crown, or a bishop, or a grandee of Spain, a lieutenant-general, a vice-admiral, ambassador, minister plenipotentiary, counselor of state, judge, or attorney-general of the supreme court, of the court of accounts, etc. No Cuban has ever filled any of the above positions, and scarcely two or three are grandees. The only natives of Cuba who can be senators are those who have been deputies in three different Congresses, or who are professors and have held for four years a university chair, provided that they have an income of $1,500; or those who have a title of nobility, or have been deputies, provincial deputies, or mayors in towns of over 20,000 inhabitants, if they have in addition an income of $4,000, or pay a direct contribution of $800 to the treasury. This will increase in one or two dozen the number of Cubans qualified to be senators.

In this manner has legislative work, so far as Cuba is concerned, turned out to be a farce. *The various Governments have legislated for* the island as they pleased. The

representatives of the peninsular provinces did not even take the trouble of attending the sessions of the Cortes when Cuban affairs were to be dealt with; and there was an instance when the estimates (budget) for the Great Antille were discussed in the presence of less than thirty deputies, and a single one of the ministers, the minister of "ultramar" (session of April 3, 1880).

Through the contrivance of the law, as well as through the irregularities committed and consented in its application, have the Cubans been deprived also of representation in the local corporations to which they were entitled, and in many cases they have been entirely excluded from them. When, despite the legalized obstacles and the partiality of those in power, they have obtained some temporary majority, the Government has always endeavored and succeeded in making their triumph null and void. Only once did the home-rule party obtain a majority in the provincial deputation of Havana, and then the Governor-General appointed from among the Spaniards a majority of the members of the permanent commission. Until that time this commission had been of the same political complexion as the majority of the deputation. By such proceedings have the Cubans been gradually expelled, even from the municipal bodies. Suffice it to say that the law provides that the derramas (assessments) be excluded from the computation of the tributary quotas, notwithstanding that they constitute the heaviest burden upon the municipal taxpayer. And the majorities, consisting of Spaniards, take good care to make this burden fall with heavier weight upon the Cuban proprietor. Thus the latter has to bear a heavier taxation with less representation.

This is the reason why the scandalous case has occurred lately of not a single Cuban having a seat in the "Ayuntamiento" (board of aldermen) of Havana. In 1891 the Spaniards predominated in thirty-one out of thirty-seven "Ayuntamientos" in the province of Havana. In that of Güines, with a population of 12,500 Cuban inhabitants, not a single one of the latter was found among its councilors. In the same epoch there were only three Cuban deputies in the provincial deputation of Havana; two in that of Matanzas, and three in that of Santa Clara. And these are the most populous regions in the Island of Cuba.

As, on the other hand, the government of the metropolis appoints the officials of the colony, all the lucrative, influential, and representative offices are secured to the Spaniards from Europe. The Governor-General, the regional and provincial governors, the "intendentes," comptrollers, auditors, treasurers, chiefs of communications, chiefs of the custom-houses, chiefs of administration, presidents and vice-presidents of the Spanish bank, secretaries of the Government, presiding judges of the "audiencia," presidents of tribunal, magistrates, attorneys-general, archbishops, bishops, canons, pastors of rich parishes—all, with very rare exceptions, are Spaniards from Spain. The Cubans are found only as minor clerks in the Government offices, doing all the work and receiving the smallest salaries.

From 1878 to this date there have been twenty governors in the province of Matanzas. Eighteen were Spaniards and two Cubans. But one of these, Brigadier-General Acosta, was an army officer in the service of Spain, who had fought against his countrymen; and the other, Señor Gonzàlez Muñoz, is a bureaucrat. During the same period there has been only one native Cuban acting as governor in the province of Havana, Señor Rodriguez Batista, who spent all his life in Spain, where he made his administrative career. In the other provinces there has never, probably, been a single governor born in the country.

In 1887 there was created a council, or board of ultramar, under the minister of the colonies. Not a single Cuban has ever been found among its members. On the other hand, such men as Generals Armiñan and Pando have held positions in it.

The predominance of the Government goes further still. It weighs with all its might upon the local corporations. There are deputations in the provinces, and not only are their powers restricted and their resources scanty, but the Governor-General appoints their presidents and all the members of the permanent commissions. There are "ayuntamientos" elected in accordance with the reactionary law of 1877, restricted and curtailed as applied to Cuba by Señor Canovas. But the Governor-General appoints the mayors, who may not belong to the corporation, and the governor of the province appoints the secretaries. The Government reserves, moreover, the right to remove the mayors, of replacing them, and of suspending the councillors and the "ayuntamientos," partly or in a body. It has frequently made use of this right for electoral purposes, to the detriment always of the Cubans.

As may be seen, the crafty policy of Spain has closed every avenue through which redress might be obtained. All the powers are centered in the Government of Madrid and its delegates in the colony; and in order to give her despotism a slight varnish of a representative régime she has contrived with her laws to secure complaisant majorities in the pseudoelective bodies. To accomplish this purpose she has relied upon the European immigrants, who have always supported the Government of the metropolis in exchange for lasting privileges. The existence of a Spanish *party, as that of an English* party at one time in Canada, has been the foundation of

Spanish rule in Cuba. Thus, through the instrumentality of the laws and the Government, a régime of castes has been enthroned there, with its outcome of monopolies, corruption, immorality, and hatred. The political contest there, far from being the fruitful clash of opposite ideas, or the opposition of men representing different tendencies, but all seeking a social improvement, has been only a struggle between hostile factions—the conflict between infuriated foes which precedes an open war. The Spanish resident has always seen a threat in the most timid protest of the Cuban—an attack upon the privileged position on which his fortune, his influence, and his power are grounded, and he is always willing to stifle it with insult and persecution.

II.

What use the Spanish Government has made of this power is apparent in the threefold spoliation to which it has submitted the Island of Cuba. Spain has not, in fact, a colonial policy. In the distant lands she has subdued by force Spain has sought nothing but immediate riches, and these it has wrung by might from the compulsory labor of the natives. For this reason Spain to-day in Cuba is only a parasite. Spain exploits the Island of Cuba through its fiscal régime, through its commercial régime, and through its bureaucratic régime. These are the three forms of official spoliation, but they are not the only forms of spoliation.

When the war of 1878 came to an end two-thirds of the island were completely ruined. The other third, the population of which had remained peaceful, was abundantly productive; but it had to face the great economical change involved in the impending abolition of slavery. Slavery had received its deathblow at the hands of the insurrection, and Cuban insurrectionists succeeded at the close of the war in securing its eventual abolition. Evidently it would have been a wholesome and provident policy to lighten the fiscal burdens of a country in such a condition. Spain was only bent on making Cuba pay the cost of the war. The metropolis overwhelmed the colony with enormous budgets, reaching as high a figure as $46,000,000, and this only to cover the obligations of the state, or rather to fill the unfathomable gulf left by the wastefulness and plunder of the civil and military administration during the years of war, and to meet the expenses of the military occupation of the country. Here follow a few figures: The budget for the fiscal year of 1878 to 1879 amounted to $46,594,000; that of 1879 to 1880 to an equal sum; that of 1882 to 1883 to $35,860,000; that of 1883 to 1884 to $34,180,000; that of 1884 to 1885 to the same sum; that of 1885 to 1886 to $34,169,000. For the remaining years, to the present time, the amount of the budget has been about $26,000,000, this being the figure for 1893 to 1894, and to be the same by prorogation for the current fiscal year.

The gradual reduction that may be noted was not the result of a desire to reduce the overwhelming burdens that weigh upon the country. It was imposed by necessity. Cuba was not able by far to meet such a monstrous exaction. It was a continuous and threatening deficit that imposed these reductions. In the first of the above-named years the revenue was $8,000,000 short of the budget or appropriations. In the second year the deficit reached the sum of $20,000,000. In 1883 it was nearly $10,000,000. In the following years the deficits averaged nearly $4,500,000. At present the accumulated amount of all these deficits reaches the sum of $100,000,000.

As a consequence of such a reckless and senseless financial course, the debt of Cuba has been increased to a fabulous sum. In 1868 we owed $25,000,000. When the present war broke out our debt, it was calculated, reached the net sum of $190,000,000. On the 31st of July of the current year the Island of Cuba was reckoned to owe $295,707,264 in bulk. Considering its population, the debt of Cuba exceeds that of all the other American countries, including the United States. The interest on this debt imposes a burden of $9.79 on each inhabitant. The French people, the most overburdened in this respect, owe only $6.30 per inhabitant.

This enormous debt, contracted and saddled upon the country without its knowledge; this heavy load that grinds it and does not permit its people to capitalize their income, to foster its improvements, or even to entertain its industries, constitutes one of the most iniquitous forms of spoliation the island has to bear. In it are included a debt of Spain to the United States; the expenses incurred by Spain when she occupied Santo Domingo; those for the invasion of Mexico in alliance with France and England; the expenditures for her hostilities against Peru; the money advanced to the Spanish treasury during its recent Carlist wars; and all that Spain has spent to uphold its domination in Cuba and to cover the lavish expenditures of its administration since 1868. Not a cent of this enormous sum has been spent in Cuba to advance the work of improvement and civilization. It has not contributed to build a single kilometer of highway or of railroad, nor to erect a single light-house or deepen a single port; it has not built one asylum or opened one public school. Such a heavy burden has been left to the future generations without a single compensation or benefit.

But the naked figures of the Cuban budgets and of the Cuban debt tell very little in regard to their true *importance and signification* as machines to squeeze out the

substance of a people's labor. It is necessary to examine closer the details of these accounts and expenditures.

Those of Cuba, according to the last budgets or appropriations, amount to $26,411,-314, distributed as follows:

General obligations	$12,884,549.55
Department of justice (courts, etc.)	1,006,308.51
Department of war	5,918,598.16
Department of the treasury	727,892.45
Department of the navy	1,091,969.65
Government, administration	4,035,071.43
Interior improvements (fomento)	746,925.15

There are in Cuba 1,631,687 inhabitants according to the last census, that of 1887. That is to say, that this budget burdens them in the proportion of $16.18 for each inhabitant. The Spaniards in Spain pay only —42.06 pesetas per head. Reducing the Cuban dollars to pesetas at the exchange rate of $95 for 500 pesetas, there results that the Cubans have to pay a tribute of 85.16 pesetas for each inhabitant; more than double the amount a Spaniard has to pay in his European country.

As shown above, most of this excessive burden is to cover entirely unproductive expenditures. The debt consumes 40.89 per cent of the total amount. The defense of the country against its own native inhabitants, the only enemies who threaten Spain, including the cost of the army, the navy, the civil guard, and the guardians of public order, takes 36.59 per cent. There remains for all the other expenditures required by civilized life 22.52 per cent.

And of this percentage the State reserves to us, what a liberality! 2.75 per cent to prepare for the future and develop the resources of the country!

Let us see now what Spain has done to permit at least the development of natural wealth and the industry of a country impoverished by this fiscal régime, the work of cupidity, incompetency, and immorality. Let us see whether that nation has left at least some vitality to Cuba, in order to continue exploiting it with some profit.

The economical organization of Cuba is of the simplest kind. It produces to export, and imports almost everything it consumes. In view of this, it is evident that all that Cuba required from the State was that it should not hamper its work with excessive burdens, nor hinder its commercial relations; so that it could buy cheap where it suited her and sell her products with profit. Spain has done all the contrary. She has treated the tobacco as an enemy; she has loaded the sugar with excessive imposts; she has shackled with excessive and abusive excise duties the cattle-raising industry; and with her legislative doings and undoings she has thrown obstacles in the way of the mining industry. And to cap the climax, she has tightly bound Cuba in the network of a monstrous tariff and a commercial legislation which subjects the colony, at the end of the nineteenth century, to the ruinous monopoly of the producers and merchants of certain regions of Spain, as in the halcyon days of the colonial compact.

The district which produces the best tobacco in the world, the famous Vuelta Abajo, lacks every means of transportation afforded by civilization to foster and increase the value of its products. No roads, no bridges, or even ports, are found there. The state in Cuba collects the taxes, but does not invest them for the benefit of any industry. On the other hand, those foreign countries desirous of acquiring the rich tobacco-raising industry have closed their markets to our privileged product by imposing upon it excessive import duties, while the Spanish Government burdens its exportation from our ports with a duty of $1.80 on every thousand cigars. Is this not a stroke of actual insanity?

Everybody is aware of the tremendous crisis through which the sugar industry has been passing for some years, owing to the rapid development of the production of this article everywhere. Every Government has hastened to protect its own by more or less empirical measures. This is not the place to judge them. What is important is to recall the fact that they have endeavored to place the threatened industry in the best condition to withstand the competition. What has Spain done in order, if not to maintain the strong position held before by Cuba, at least to enable the colony to carry on the competition with its every day more formidable rivals? Spain pays bounties to the sugar produced within its own territory, and closes its markets to the Cuban sugar by imposing upon it an import duty of $6.20 per hundred kilograms. It has been calculated that a hundredweight of Cuban sugar is overburdened when reaching the Barcelona market with 143 per cent of its value. The Spanish Government oppresses the Cuban producer with every kind of exactions; taxes the introduction of the machinery that is indispensable for the production of sugar, obstructs its transportation by imposing heavy taxes on the railroads, and winds up the work by exacting another contribution called "industrial duty," and still another for loading or shipping, which is equivalent to an export duty.

As a last stroke, Spain has reenforced the commercial laws of June 30 and July 20, *1882, virtually closing the* ports of Cuba to foreign commerce, and establishing the

monopoly of the peninsular producers, without any compensation to the colony. The apparent object of these laws was to establish the "cabotaje" (coasting trade) between Cuba and Spain. By the former all the Cuban products were admitted free of duty in the Spanish Peninsula, excepting, however, the tobacco, rum, sugar, cocoa, and coffee, which remained temporarily burdened. By the latter the duties on the importations from Spain in Cuba were to be gradually reduced through a period of ten years, until, in 1892, they were entirely abolished. The result, however, has been that the temporary duties on the principal, almost the only, Cuban products have remained undisturbed until now, and the duties on the Spanish products have disappeared. The "cabotage" (coasting trade) is carried on from Spain to Cuba, but not from Cuba to Spain. The Spanish products pay no duties in Cuba; the Cuban products pay heavy duties in Spain. As at the same time the differential tariffs which overburdened with excessive duties the foreign products have been retained, the unavoidable consequence has been to give the Cuban market entirely to the Peninsula producers. In order to have an idea as to how far the monopoly of Spain goes, it will be sufficient to point to the fact that the burdens which many of the foreign articles have to bear exceed 2,000 and even 2,300 per cent, as compared with those borne by the Spanish products. One hundred kilograms of cotton prints pay a duty, if Spanish, of $26.65; if foreign, $47.26. One hundred kilograms of knitted goods pay, if from Spain, $10.95; if from a foreign country, $195. One thousand kilograms of bags for sugar, when they are or are represented to be Spanish, pay $4.69; if from other country, $82.50. One hundred kilograms of cassimere, if it is a Spanish product, pay $15.47; if foreign, $300.

Still, if Spain was a flourishing industrial country, and produced the principal articles required by Cuba for the consumption of its people, or for developing and fostering its industries, the evil, although always great, would be a lesser one. But everybody knows the backwardness of the Spanish industries, and the inability of Spain to supply Cuba with the products she requires for her consumption and industries. The Cubans have to consume or use Spanish articles of inferior quality or pay exorbitant prices for foreign goods. The Spanish merchants have found, moreover, a new source of fraud in the application of these antiquated and iniquitous laws; it consists in nationalizing foreign products for importation into Cuba.

As the mainspring of this senseless commercial policy is to support the monopoly of Spanish commerce, when Spain has been compelled to deviate from it to a certain extent by an international treaty, it has done so reluctantly and in the anxious expectation of an opportunity to nullify its own promises. This explains the accidental history of the reciprocity treaty with the United States, which was received with joy by Cuba, obstructed by the Spanish administration, and prematurely abolished by the Spanish Government as soon as it saw an opportunity.

The injury done to Cuba, and the evil effects produced by this commercial legislation, are beyond calculation; its effects have been material losses which have engendered profound discontent. The "Circulo de Hacendados y Agricultores," the wealthiest corporation of the Island, last year passed judgment on these commercial laws in the following severe terms:

"It would be impossible to explain, should the attempt be made, what is the signification of the present commercial laws as regards any economical or political plan or system; because, economically, they aim at the destruction of public wealth, and, politically, they are the cause of inextinguishable discontent, and contain the germs of grave dissensions."

But Spain has not taken heed of this; her only care has been to keep the producers and merchants of such rebellious provinces as Catalonia contented, and to satisfy its military men and bureaucrats.

For the latter is reserved the best part of the booty taken from Cuba. High salaries and the power of extortion for the officeholders sent to the colony; regular tributes for the politicians who uphold them in the metropolis. The Governor-General is paid a salary of $50,000, in addition to a palace, a country house as a summer resort, servants, coaches, and a fund for secret expenses at his disposal. The director-general of the treasury receives a salary of $18,500. The archbishop of Santiago and the bishop of Havana, $18,000 each. The commander-general of the "Apostadero" (naval station), $16,392. The general segundo cabo (second in command of the Island), and the president of the "audiencia," $15,000 each. The governor of Havana and the secretary of the General Government, $8,000 each. The postmaster-general, $5,000. The collector for the Havana custom-house, $4,000. The manager of lotteries, the same salary. The chief clerks of administration of the first class receive $5,000 each; those of the second class, $4,000, and those of the third class, $3,000 each. The major-generals are paid $7,500; the brigadier-generals, $4,500, and when in command, $5,000; the colonels, $3,450, and this salary is increased when they are in command of a regiment. The captains of "navío" (the largest men-of-war) receive $6,300; the captains of frigate, $4,560; the lieutenants of "navío" of the the first class, $3,370. All these functionaries are entitled to free lodgings and domestic serv-

ants. Then follows the numberless crowd of minor officials, all well provided for, and with great facilities better to provide for themselves.

At the office of the minister of "ultramar" (of the colonies), who resides in Madrid, and to whom $96,800 a year are assigned from the treasury of Cuba—at that office begins the saturnalia in which the Spanish bureaucrats indulge with the riches of Cuba. Sometimes through incapacity, but more frequently for plunder, the money exacted from the Cuban taxpayers is unscrupulously and irresponsibly squandered. It has been demonstrated that the debt of Cuba has been increased in $50,232,500 through Minister Fabié's incapacity. At the time this minister was in power the Spanish Bank disposed of twenty millions from the Cuban treasury, which were to be carried in account current at the disposal of the minister for the famous operation of withdrawing the paper currency. Cuba paid the interest on these millions, and continued paying it all the time they were utilized by the bank. Minister Romero Robledo took at one time (in 1892) $1,000,000 belonging to the treasury of Cuba from the vaults of the Bank of Spain, and lent it to the Transatlantic Company, of which he was a stockholder. This was done in defiance of law and without any authorization whatever. The minister was threatened with prosecution, but he haughtily replied that, if prosecuted, all his predecessors from every political party would have to accompany him to the court. That threat came to nothing.

In June of 1890 there was a scandalous debate in the Spanish Cortes, in which some of the frauds committed upon the Cuban treasury were, not for the first time, brought to light. It was then made public that $6,500,000 had been abstracted from the "caja de depósitos," notwithstanding that the safe was locked with three keys, and each one was in the possession of a different functionary. Then it was known that, under the pretext of false vouchers for transportation and fictitious bills for provisions, during the previous war, defalcations had been found afterwards amounting to $22,811,516. In the month of March of the same year General Pando affirmed that the robberies committed through the issue of warrants by the "junta de la deuda" (board of public debt) exceeded the sum of $12,000,000.

These are only a few of the most salient facts. The large number of millions mentioned above represent only an insignificant part of what a venal administration, sure of impunity, exacts from Cuban labor. The network of artful schemes to cheat the Cuban taxpayer and defraud the State covers everything. Falsification of documents, embezzlement of revenues, bargains with delinquent debtors, exaction of higher dues from inexperienced peasants, delays in the dispatch of judicial proceedings in order to obtain a more or less considerable gratuity; such are the artful means daily employed to empty the purse of the taxpayer and to divert the public funds into the pockets of the functionaries.

These disgraceful transactions have more than once been brought out to light; more than once have the prevaricators been pointed out. Is there any record of any of them having ever been punished?

In August of 1887 General Marin entered the custom-house of Havana at the head of a military force, besieged and occupied it, investigated the operations carried on there, and discharged every employee. The act caused a great stir, but not a single one of the officials was indicted or suffered a further punishment. There were, in 1891, 350 officials indicted in Cuba for committing fraud; not one of them was punished.

But how could they be punished? Every official who comes to Cuba has an influential patron in the court of Madrid for whose protection he pays with regularity. This is a public secret. General Salamanca gave it out in plain words, and before and after General Salamanca all Spain knew and knows it. The political leaders are well known who draw the highest income from the officeholders of Cuba, who are, as a matter of course, the most fervent advocates of the necessity of Spanish rule in Cuba. But Spanish bureaucracy is moreover so deep-rooted in Spain that it has succeeded in shielding itself even against the action of the courts of justice. There is a royal decree (that of 1882) in force in Cuba, which provides that the ordinary courts can not take cognizance of such offenses as defalcation, abstraction or malversation of public funds, forgery, etc., committed by officials of the administration, if their guilt is not first established by an administrative investigation. The administration is, therefore, its own judge. What further security does the corrupt officeholder need?

III.

We have shown that notwithstanding the promises of Spain and the ostensible changes introduced in the government of Cuba since 1878, the Spaniards from Europe have governed and ruled exclusively in Cuba, and have continued exploiting it until they have ruined the country. Can this tyrannical system be justified by any kind of benefits that might compensate for the deprivation of actual power of which the natives of the colony complain? More than one despotic government has tried to justify itself with the material prosperity it has fostered, or with the safety it has

secured to its citizens, or with the liberty it has given to certain manifestations of civilized life. Let us see whether the Cubans are indebted to the iron government of Spain for any of these compensating blessings.

Personal safety is a myth among us. Outlaws, as well as men of law, have disposed at will of the property, the peace, and the life of the inhabitants of Cuba. The civil guard (armed police), far from being the guardians, have been the terror of the Cuban peasants. Wherever they pass they cause an alarm by the brutal ill treatment to which they submit the inhabitants, who in many cases fly from their homes at their approach. Under the most trifling pretext they beat unmercifully the defenseless countrymen, and very frequently they have killed those they were conveying under arrest. These outrages became so notorious that the commander in chief of the civil guard, Brigadier-General Denis, had to issue a circular in which he declared that his subordinates, "under pretext of obtaining confidential information, resorted to violent measures," and that "the cases are very frequent in which individuals arrested by forces of the corps attempt to escape, and the keepers find themselves in the necessity of making use of their weapons." What the above declarations signify is evident, notwithstanding the euphemisms of the official language. The object of this circular was to put a stop to these excesses; it bears the date of 1883. But the state of things continued the same. In 1886 the watering place of Madruga, one of the most frequented summer resorts in the island, witnessed the outrageous attacks of Lieutenant Sainz. In 1887 occurred the stirring trial of the "componte," occasioned by the application of torture to the brothers Aruca, and within a few days were recorded in the neighborhood of Havana the cases of Señor Riveron, who was stabbed in Goves by individuals of the public force; of Don Manuel Martinez Meran and Don Francisco Galañena, who were beaten, the former in Calabazar, and the latter in Yaguajay; of Don José Felipe Canosa, who narrowly escaped being murdered in San Nicolas, and of a resident of Ceiba Mocha, whom the civil guard drove from his home.

This was far from the worst. In the very center of Havana, in the Camp de Marte, a prisoner was killed by his guards, and the shooting at Amarillas and the murders at Puentes Grandes and Alquízar are deeds of woful fame in the country. The administration of General Prendergast has left a sorrowful recollection for the frequency with which prisoners who attempted to escape were shot down.

While the armed police force were beating and murdering peaceful inhabitants, the highwaymen were allowed to escape unscathed to devastate the country at their pleasure. Although three millions are assigned in the budget to the service of public safety, there are districts, such as the Province of Puerto Príncipe, where its inhabitants have had to arm themselves and undertake the pursuit of the bandits. The case has occurred of an army of 5,000 or 6,000 troops being sent to pursue a handful of highwaymen within a small territory without succeeding in capturing them. Meanwhile a special bureau was established in Havana for the prosecution of highwaymen, and fabulous sums were spent by it. The best the Government succeeded in doing was to bargain with a bandit, and deceive and kill him afterwards on board the steamer *Baldomero Iglesias* in the bay of Havana.

Nevertheless, the existence of highwaymen has served as a pretext to curtail the jurisdiction of the ordinary courts and submit the Cubans to the jurisdiction of the courts-martial, contrary to the constitution of the state, which had already been proclaimed. In fact, the code of military laws (codigo de justicia militar) provides that the offenses against persons and the means of transportation, as well as arson, when committed in the provinces of ultramar (the colonies) and the possessions of Africa and Oceanica, be tried by court-martial.

It is true, however, than an explicit legal text was not necessary for the Government to nullify the precepts of the constitution. This was promulgated in Cuba, with a preamble providing that the Governor-General and his delegates should retain the same powers they had before its promulgation. The banishment of Cubans have continued after as before said promulgation. In December of 1891 there was a strike of wharf laborers in the Province of Santa Clara. To end it the governor captured the strikers and banished them en masse to the Island of Pinos.

The deportations for political offenses have not been discontinued in Cuba, and although it is stated that no executions for political offenses have taken place since 1878, it is because the Government has resorted to the more simple expedient of assassination. General Polavieja has declared with utmost coolness that in December of 1880 he had 265 persons seized in Cuba, Palma, San Luis, Songo, Guantánamo, and Sagua de Tánamo, and transported the same day and at the same hour to the African Island of Fernando Po. At the close of the insurrection of 1879–80 it was a frequent occurrence for the Government to send to the penal colonies of Africa the Cubans who had capitulated. The treachery of which Gen. José Maceo was a victim carries us to the darkest times of the war of Flanders and the conquest of America.

Cuba recalls with horror the dreadful assassination of Brig. Gen. Arcadio Leyte Vidal, perpetrated in the Bay of Nipe in September of 1879. War had just broken

out anew in the eastern department. Brig. Gen. Leyte Vidal resided in Mayari, assured by the solemn promise of the Spanish commander in chief of that zone that he would not be molested. One month had not elapsed since the uprising, however, when having gone to Nipe, he was invited by the commander of the gunboat *Alarma* to take dinner on board. Leyte Vidal went on board the gunboat, but never returned. He was strangled in a boat by three sailors, and his corpse was cast into the sea. This villainous deed was committed in compliance with an order from the Spanish general, Polavieja. Francisco Leyte Vidal, a cousin to Arcadio, miraculously escaped the same tragic fate.

The mysterious deaths of Cubans who had capitulated long before have been frequent in Cuba. To one of these deaths was due the uprising of Tunas de Bayamo in 1879.

If the personal safety of the Cubans, in a period which the Spaniards would depict with brilliant colors, continues at the mercy of their rulers, who are aliens in the country both by birth and in ideas, have the Cubans' honor and property any better safeguard? Is the administration of justice good, or even endurable? The very idea of a lawsuit frightens every honest Cuban. Nobody trusts the honesty or independence of the judges. Despite the provisions of the constitution, without warrant and for indefinite time, imprisonments are most common in Cuba. The magistrates can tighten or loosen the elastic meshes of the judicial proceedings. They know well that if they curry favor with the Government they can do anything without incurring responsibility. They consider themselves, and without thinking it a disgrace, as mere political tools. The presidents and attorneys-general of the "audiencias" receive their instructions at the captain-general's office. Twice have the governors of Cuba aimed at establishing a special tribunal to deal with the offenses of the press, thereby undermining the constitution. Twice has this special tribunal been established. More than once has a straightforward and impartial judge been found to try a case in which the interests of influential people were involved. On such occasions the straightforward judge has been replaced by a special judge.

In a country where money is wastefully spent to support a civil and military bureaucracy the appropriation for the administration of justice does not reach $500,000. On the other hand, the sales of stamped paper constitute a revenue of $750,000. Thus the State derives a pecuniary profit from its administration of justice.

Is it, then, a wonder that the reforms that have been attempted by establishing lower and higher courts to take cognizance of criminal cases, and by introducing oral and public trials should not have contributed in the least to improve the administration of justice? Onerous services have been exacted from people without proper compensation as gratuitous services. The Government, so splendidly liberal when its own expenses are in question, haggles for the last cent when dealing with truly useful and reproductive services.

Is the Cuban compensated for his absolute deprivation of political power, the fiscal extortions, and the monstrous deficiencies of judicial administration by the material prosperity of his country? No man acquainted with the intimate relations which exist between the fiscal régime of a country and its economical system will believe that Cuba, crushed as it is, by unreasonable budgets and an enormous debt, can be rich. The income of Cuba in the most prosperous times has been calculated at $80,000,000. The state, provincial, and municipal charges take much more than 40 per cent of this amount. This fact explains itself. We need not draw any inferences therefrom. Let us confine ourselves to casting a glance over the aspect presented by the agricultural, industrial, and real estate interests in Cuba at the beginning of the present year.

Despite the prodigious efforts made by private individuals to extend the cultivation of the sugar cane and to raise the sugar-making industry to the plane it has reached, both the colonists and the proprietors of the sugar plantations and the sugar mills (centrales) are on the brink of bankruptcy and ruin. In selling the output they knew that they would not get sufficient means to cover the cost of keeping and repairing their colonies and sugar mills. There is not a single agricultural bank in Cuba. The "hacendado" (planter, landowner) had to recur to usurious loans and to pay 18 and 20 per cent for the sums which they borrowed. Not long ago there existed in Havana the Spanish Bank, the Bank of Commerce, the Industrial Bank, the Bank of St. Joseph, the Bank of the Alliance, the Bank of Maritime Insurances, and the Savings Bank. Of these there remain to-day only the Spanish Bank, which has been converted into a vast State office, and the Bank of Commerce, which owes its existence to the railways and warehouses it possesses. None of these give any aid to the sugar industry.

The cigar-making industry, which was in such flourishing condition a short time ago, has fallen so low that fears are entertained that it may emigrate entirely from Cuba. The weekly El Tabaco came to the conclusion that the exportation of cigars from Cuba would cease entirely within six years. From 1889 to 1894 the exportation from the port of Havana had decreased by 116,200,000 cigars.

City real estate has fallen to one-half and in some cases to one-third the value it had before 1884. A building in Havana which was erected at a cost of $600,000 was sold in 1893 for $120,000.

Stocks and bonds tell the same story. Almost all of them are quoted in Havana with heavy discounts.

The cause of the ruin of Cuba, despite her sugar output of 1,000,000 tons and her vast tobacco fields, can be easily explained. Cuba does not capitalize, and it does not capitalize because the fiscal régime imposed upon the country does not permit it. The money derived from its large exportations does not return either in the form of importations of goods or of cash. It remains abroad to pay the interest of its huge debt, to cover the incessant remittances of funds by the Spaniards who hasten to send their earnings out of the country, to pay from our treasury the pensioners who live in Spain, and to meet the drafts forwarded by every mail from Cuba by the Spaniards as a tribute to their political patrons in the metropolis, and to help their families.

Cuba pays $2,192,795 in pensions to those on the retired list and to superannuated officials not in service. Most of this money is exported. The first chapters of the Cuban budget imply the exportation of over $10,600,000. Cuba pays a subsidy of $471,836.68 to the Transatlantic Company. It would be impossible to calculate the amount of money taken out of Cuba by private individuals; but this constant exportation of capital signifies that nobody is contented in Cuba and that everybody mistrusts its future. The consequence is that notwithstanding the apparently favorable commercial balance exchange is constantly and to a high degree against Cuba.

On the other hand, if Cuba labors and strives to be on the same plane as its most progressive competitors, this is the work of her own people, who do not mind any sacrifices; but the Government cares little or nothing about securing to the country such means of furthering its development as are consigned in the budget under the head of "Fomento."

And now, at the outbreak of the present war, Spain finds that, although the appropriations consigned in our budgets since 1878 amount to nearly $500,000,000, not a single military road has been built, no fortifications, no hospitals, and there is no material of war. The State has not provided even for its own defense. In view of this fact, nobody will be surprised to hear that a country 670 kilometers long, with an area of 118,833 square kilometers, has only 246½ lineal kilometers of high roads, and these almost exclusively in the province of Havana. In that of Santiago de Cuba there are 9 kilometers; in Puerto Principe and Las Villas not a single one. Cuba has 3,506 kilometers of seashore and 54 ports; only 15 of these are open to commerce. In the labyrinth of keys, sand banks, and breakers adjacent to our coasts there are only 19 light-houses of all classes. Many of our ports, some of the best among them, are filling up. The coasting steamers can hardly pass the bars at the entrance of the ports of Nuevitas, Gibara, Baracoa, and Santiago de Cuba. Private parties have sometimes been willing to remedy these evils; but then the central administration has interfered, and after years of red tape things have remained worse than before. In the course of twenty-eight years only 139 kilometers of high-roads were built in Cuba; 2 first-class light-houses were erected, 3 of the second class, and 1 of the fourth class, 3 beacon lights and 2 port lights; 246 meters of wharf were built, and a few ports were superficially cleaned and their shoals marked. This was all. On the other hand, the department of public works consumes unlimited millions in salaries and in repairs.

The neglect of public hygiene in Cuba is proverbial. The technical commission sent by the United States to Havana to study the yellow fever declared that the port of the capital of Cuba, owing to the inconceivable filth, is a permanent source of infection, against which it is necessary to take precautions. There is in Havana, however a "junta de puerto" (board of port wardens) which collects dues and spends them with the same munificence as the other bureaucratic centers.

Does the Government favor us more in the matter of education? It will suffice to state that only $182,000 are assigned to public instruction in our splendid budget. And it may be proved that the University of Havana is a source of pecuniary profit to the State. On the other hand, this institution is without laboratories, instruments, and even without water to carry on experiments. All the countries of America, excepting Bolivia, all of them, including Haiti, Jamaica, Trinidad, and Guadalupe, where the colored race predominates, spend a great deal more than the Cuban Government for the education of the people. On the other hand, only Chile spends as much as Cuba for the support of an army. In view of this it is easily explained why 76 per cent of such an intelligent and wide-awake people as that of Cuba can not read and write. The most necessary instruction among us, the technical and industrial, does not exist. The careers and professions most needed by modern civilization are not cultivated in Cuba. In order to become a topographer, a scientific agriculturist, an electrician, an industrial or mechanical engineer, a railroad or mining *engineer, the Cuban has to go* to a foreign country. The State *in Cuba does not support a single public library.*

Are the deficiencies of the Spanish régime compensated by the wisdom of its administration? Every time the Spanish Government has undertaken the solution of any of the great problems pending in Cuba it has only confused and made it worse. It has solved it blindly or yielded to the influence of those who were to profit by the change. It will be sufficient to recall the withdrawal from circulation of the bank notes, which proved to be a highly lucrative transaction for a few persons, but which only embarrassed and impaired the monetary circulation of the island. From one day to another the cost of living became 40 per cent dearer. The depreciated Spanish silver entered in circulation to drive out, as was natural, the "centen" (five-dollar gold coin) and make small transactions difficult. To reach these results the Spanish Government had transformed a debt on which it had no interest to pay into a debt bearing a high rate of interest. It is true that, in exchange, all the retail dealers whose votes it was desirable to keep derived very large profits from the operation. These dealers are, of course, Spaniards.

IV.

In exchange for all that Spain withholds from us they say that it has given us liberties. This is a mockery. The liberties are written in the constitution but obliterated in its practical application. Before and after its promulgation the public press has been rigorously persecuted in Cuba. Many journalists, such as Señores Cepeda and López Briñas, have been banished from the country without the formality of a trial. In November of 1891 the writer Don Manuel A. Balmaseda was tried by court-martial for having published an editorial paragraph in El Criterio Popular, of Remedios, relative to the shooting of the medical students. The newspapers have been allowed to discuss public affairs theoretically; but the moment they denounce any abuse or the conduct of any official they feel the hand of their rulers laid upon them. The official organ of the home-rule party, El País, named before El Triunfo, has undergone more than one trial for having pointed in measured terms to some infractions of the law on the part of officials, naming the transgressors. In 1887 that periodical was subjected to criminal proceedings simply because it had stated that a son of the president of the Havana "audiencia" was holding a certain office contrary to law.

They say that in Cuba the people are at liberty to hold public meetings, but every time the inhabitants assemble, previous notification must be given to the authorities, and a functionary is appointed to be present, with power to suspend the meeting whenever he deems such a measure advisable. The meetings of the "Círculo de Trabajadores" (an association of workingmen) were forbidden by the authorities under the pretex that the building where they were to be held was not sufficiently safe. Last year the members of the "Círculo de Hacendados" (association of planters) invited their fellow-members throughout the country to get up a great demonstration to demand a remedy which the critical state of their affairs required. The Government found means to prevent their meeting. One of the most significant events that have occurred in Cuba, and one which throws a flood of light upon its political régime, was the failure of the "Junta Magna" (an extraordinary meeting) projected by the "Círculo de Hacendados." This corporation solicited the cooperation of the "Sociedad Económica" and of the "Junta General de Comercio" to hold a meeting for the purpose of sending to the metropolis the complaints which the precarious situation of the country inspired. The work of preparation was already far advanced when a friend of the Government, Señor Rodriguez Correa, stated that the Governor-General looked with displeasure upon and forbade the holding of the great meeting. This was sufficient to frighten the "Círculo" and to secure the failure of the project. It is then evident that the inhabitants of Cuba can have meetings only when the Government thinks it advisable to permit them.

Against this political régime, which is a sarcasm and in which deception is added to the most absolute contempt for right, the Cubans have unceasingly protested since it was implanted in 1878. It would be difficult to enumerate the representations made in Spain, the protests voiced by the representatives of Cuba, the commissions that have crossed the ocean to try to impress upon the exploiters of Cuba what the fatal consequences of their obstinacy would be. The exasperation prevailing in the country was such that the "junta central" of the home-rule party issued in 1892 a manifesto in which it foreshadowed that the moment might shortly arrive when the country would resort to "extreme measures, the responsibility of which would fall on those who, led by arrogance and priding themselves on their power, hold prudence in contempt, worship force, and shield themselves with their impunity."

This manifesto, which foreboded the mournful hours of the present war, was unheeded by Spain, and not until a division took place in the Spanish party, which threatened to turn into an armed struggle, did the statesmen of Spain think that the moment had arrived to try a new farce, and to make a false show of reform *in the administrative régime* of Cuba. Then was Minister Maura's plan broached, *to be modified before its* birth by Minister Abarzuas.

This project, to which the Spaniards have endeavored to give capital importance in order to condemn the revolution as the work of impatience and anarchism, leaves intact the political régime of Cuba. It does not alter the electoral law. It does not curtail the power of the bureaucracy. It increases the power of the general Government. It leaves the same burdens upon the Cuban taxpayer, and does not give him the right to participate in the information of the budgets. The reform is confined to the changing of the council of administration (now in existence in the island, and the members of which are appointed by the Government) into a partially elective body. One-half of its members are to be appointed by the Government and the other half to be elected by the qualified electors—that is, who assessed and pay for a certain amount of taxes. The Governor-General has the right to veto all its resolutions and to suspend at will the elective members. This council is to make up a kind of special budget embracing the items included now in the general budget of Cuba under the head of "Fomento." The State reserves for itself all the rest. Thus the council can dispose of 2.75 per cent of the revenues of Cuba, while the Government distributes, as at present, 97.25 per cent for its expenses, in the form we have explained. The general budget will, as heretofore, be made up in Spain; the tariff laws will be enacted by Spain. The debt, militarism, and bureaucracy will continue to devour Cuba, and the Cubans will continue to be treated as a subjugated people. All power is to continue in the hands of the Spanish Government and its delegates in Cuba, and all the influence with the Spanish residents. This is the self-government which Spain has promised to Cuba, and which it is announcing to the world, in exchange for its colonial system. A far better form of government is enjoyed by the Bahama or the Turks islands.

The Cubans would have been wanting not only in self-respect but even in the instincts of self-preservation if they could have endured such a degrading and destructive régime. Their grievances are of such a nature that no people, no human community capable of valuing its honor and of aspiring to better its condition, could bear them without degrading and condemning itself to utter nullity and annihilation.

Spain denies to the Cubans all effective powers in their own country.

Spain condemns the Cubans to a political inferiority in the land where they are born.

Spain confiscates the product of the Cuban's labor without giving them in return either safety, prosperity, or education.

Spain has shown itself utterly incapable of governing Cuba.

Spain exploits, impoverishes, and demoralizes Cuba.

To maintain by force of arms this monstrous régime, which brings ruin on a country rich by nature and degrades a vigorous and intelligent population, a population filled with noble aspirations, is what Spain calls to defend its honor and preserve the prestige of its social functions as a civilizing power of America.

The Cubans, not in anger but in despair, have appealed to arms in order to defend their rights and to vindicate an eternal principle, a principle without which every community, however robust in appearance, is in danger—the principle of justice. Nobody has the right of oppression. Spain oppresses us. In rebelling against oppression we defend a right. In serving our own cause we serve the cause of mankind.

We have not counted the number of our enemies; we have not measured their strength. We have cast up the account of our grievances; we have weighed the mass of injustice that crushes us, and with uplifted hearts we have risen to seek redress and to uphold our rights. We may find ruin and death a few steps ahead. So be it. We do our duty. If the world is indifferent to our cause, so much the worse for all. A new iniquity shall have been consummated. The principle of human solidarity shall have suffered a defeat. The sum of good existing in the world, and which the world needs to purify its moral atmosphere, shall have been lessened.

The people of Cuba require only liberty and independence to become a factor of prosperity and progress in the community of civilized nations. At present Cuba is a factor of intranquillity, disturbance, and ruin. The fault lies entirely with Spain. Cuba is not the offender; it is the defender of its rights. Let America, let the world decide where rest justice and right.

ENRIQUE JOSÉ VARONA,
Ex-Diputado a Cortes.

NEW YORK, *October 23, 1895.*

B.

COMPILATION OF THE LAWS, RULES, DECREES, CIRCULARS, AND OTHER ORDERS PASSED BY THE NATIONAL COUNCIL FROM THE 19TH OF SEPTEMBER, 1895, THE DATE ON WHICH IT COMMENCED TO EXERCISE ITS FUNCTIONS.

MANGOS DE BARAGUA.

The National Council, in a meeting held on the 16th of October, 1895, resolved that the publication in book form in an edition of 500 copies of all the laws, rules, decrees, and other orders passed by it be printed after being previously approved by the Council and sanctioned by its president.

JOSÉ CLEMENTE VIVANCO,
The Secretary of the Council.

CONSTITUENT ASSEMBLY, REPUBLIC OF CUBA.

I, José Clemente Vivanco, secretary of the National Council and chancellor of the Republic of Cuba, certify that the representatives of the different army corps, into which the army of liberation is divided, met in constituent assembly on the 13th day of September, 1895, at Jimaguayu, agreed to have a preliminary session where the character of each representative would be accredited by the respective credential of his appointment. There resulted, after the proper examination by the chairman and secretaries, who were temporarily Citizens Salvador Cisneros Betancourt and Secretaries José Clemente Vivanco and Orencio Nodarse, the following distribution:

Representatives of the First Army Corps, Citizens Dr. Joaquin Castillo Duany, Mariano Sanchez Vaillant, Rafael M. Portuondo, and Pedro Aguillera.

For the Second, Citizens Licentiate Rafael Manduley, Enrique Cespedes, Rafael Perez Morales, and Marcos Padilla.

For the Third, Citizens Salvador Cisneros Betancourt, Lopez Recio Loinaz, Enrique Loinaz del Castillo, and Dr. Fermmin Valdes Dominguez.

For the Fourth, Licentiate Severo Pina, Dr. Santiago Garcia Canizares, Raimundo Sanchez Valdivia, and Francisco Lopez Leiba.

For the Fifth, Dr. Pedro Pinan de Villegas, Licentiate José Clemente Vivanco, Francisco Diaz Silveria, and Orencio Nodarse.

They proceeded to the election of officers for the following session and the following appointments were made: Salvador Cisneros Betancourt, president; Rafael Manduley, vice-president; secretaries, Licentiate Josè Clemente Vivanco, Francisco Lopez Leiba, Licentiate Rafael M. Portuondo, and Orencio Nodarse.

The assembly having been organized as above, and in the presence of the above representatives, they proceeded to hold the sessions to discuss the constitution which is to rule the destinies of the Republic. These sessions took place on September 13, 14, 15, and 16, instant, and in all the articles which were to form the said constitutional charta were discussed. Every article of the projected constitution presented to the assembly by the representatives licentiate, Rafael M. Portuondo, Dr. Joaquin Castillo Duany, Mariano Sanchez Vaillant, and Pedro Aguilera, was well discussed, and, together with amendments, reforms, and additions were also discussed by the proposers. On deliberation, in conformity with the opinion of the assembly, it was unanimously resolved to refer the said constitution, with the resolutions of the said assembly, to a committee of revision of the text, composed of the secretaries and of the representatives, Dr. Santiago Garcia, Canizares and Enrique, Loynaz del Castillo, who, after complying with their mission, returned the final draft of the constitution on the 16th. It was then read, and the signature of each and every representative subscribed.

The president and other members of the assembly, with due solemnity, then swore upon their honor to loyally and strictly observe the fundamental code of the Republic of Cuba, which was greeted by the spontaneous and enthusiastic acclamations of all present; in testimony of which are the minutes in the general archive of the Government.

In compliance with the resolution passed by this council in a meeting held to-day, and for its publication, I issue the following copy, in the Mangos de Baragua on the 18th of October, 1895.

JOSÉ CLEMENTE VIVANCO,
Secretary of the Council.

CONSTITUTION OF THE PROVISIONAL GOVERNMENT OF CUBA.

The revolution for the independence and creation in Cuba of a democratic Republic in its new period of war, initiated on February 24 last, solemnly declares the separation of Cuba from the Spanish monarchy, and its constitution as a free and independent State, with its own Government and supreme authority under the name of the Republic of Cuba and confirms its existence among the political divisions of the world.

The elected representatives of the revolution, in convention assembled, acting in its name and by the delegation which for that purpose has been conferred upon them by the Cubans in arms, and previously declaring before the country the purity of their thoughts, their freedom from violence, anger, or prejudice, and inspired only by the desire of interpreting the popular voice in favor of Cuba, have now formed a compact between Cuba and the world, pledging their honor for the fulfillment of said compact in the following articles of the constitution:

ARTICLE I. The supreme powers of the Republic shall be vested in a government council composed of a president, vice-president, and four secretaries of state, for the dispatch of the business of war, of the interior, of foreign affairs, and of the treasury.

ART. II. Every secretary shall have a subsecretary of state, in order to supply any vacancies.

ART. III. The government council shall have the following powers:

1. To dictate all measures relative to the civil and political life of the revolution.
2. To impose and collect taxes, to contract public loans, to issue paper money, to invest the funds collected in the island, from whatever source, and also those which may be raised abroad by loan.
3. To arm vessels, to raise and maintain troops, to declare reprisals with respect to the enemy, and to ratify treaties.
4. To grant authority, when it is deemed convenient, to order the trial by the judicial power of the president or other members of the council, if he be accused
5. To decide all matters, of whatsoever description, which may be brought before them by any citizen, except those judicial in character.
6. To approve the law of military organization and the ordinances of the army, which may be proposed by the general in chief.
7. To grant military commissions from that of colonel upward, previously hearing and considering the reports of the immediate superior officer and of the general in chief, and to designate the appointment of the latter and of the lieutenant-general in case of the vacancy of either.
8. To order the election of four representatives for each army corps whenever in conformity with this constitution it may be necessary to convene an assembly.

ART. IV. The Government council shall intervene in the direction of military operations only when in their judgment it shall be absolutely necessary to do so to realize high political ends.

ART. V. As a requisite for the validity of the decrees of the council, at least two-thirds of the members of the same must have taken part in the deliberations of the council, and the decrees must have been voted by the majority of those present.

ART. VI. The office of councilor is incompatible with any other of the Republic, and requires the age of twenty-five years.

ART. VII. The executive power is vested in the president, and, in case of disability, in the vice-president.

ART. VIII. The resolutions of the government council shall be sanctioned and promulgated by the president, who shall take all necessary steps for their execution within ten days.

ART. IX. The president may enter into treaties with the ratification of the government council.

ART. X. The president shall receive all diplomatic representatives and issue the respective commissions to the public functionaries.

ART. XI. The treaty of peace with Spain, which must necessarily have for its basis the absolute independence of the Island of Cuba, must be ratified by the government council and by an assembly of representatives convened expressly for this purpose.

ART. XII. The vice-president shall substitute the president in the case of a vacancy.

ART. XIII. In case of the vacancy in the offices of both president and vice-president on account of resignation, deposition, or death of both, or from any other cause, an assembly of representatives for the election to the vacant offices shall be convened, the senior secretaries in the meanwhile occupying the positions.

ART. XIV. The secretaries shall have voice and vote in the deliberations of resolutions of whatever nature.

ART. XV. The secretaries shall have the right to appoint all the employees of their respective offices.

ART. XVI. The subsecretaries in cases of vacancy shall substitute the secretaries of state and shall then have voice and vote in the deliberations.

ART. XVII. All the armed forces of the Republic and the direction of the military operations shall be under the control of the general in chief, who shall have under his orders as second in command a lieutenant-general, who will substitute him in case of vacancy.

ART. XVIII. All public functionaries of whatever class shall aid one another in the execution of the resolutions of the government council.

ART. XIX. All Cubans are bound to serve the revolution with their persons and interests, each one according to his ability.

ART. XX. The plantations and property of whatever description belonging to foreigners are subject to the payment of taxes for the revolution while their respective governments do not recognize the rights of belligerency of Cuba.

ART. XXI. All debts and obligations contracted since the beginning of the present period of war until the promulgation of this constitution by the chiefs of the army corps, for the benefit of the revolution, shall be valid as well as those which henceforth the government council may contract.

ART. XXII. A government council may depose any of its members for cause justifiable in the judgment of two-thirds of the councilors and shall report to the first assembly convening.

ART. XXIII. The judicial power shall act with entire independence of all the others. Its organization and regulation will be provided for by the government council.

ART. XXIV. The present constitution shall be in force in Cuba for two years from the date of its promulgation, unless the war for independence shall terminate before. After the expiration of the two years an assembly of representatives shall be convened which may modify it, and will proceed to the election of a new government council, and which will pass upon the last council. So it has been agreed upon and resolved in the name of the Republic by the constituent assembly in Jimaguayu on the 18th day of September, 1895, and in witness thereof we, the representatives delegated by the Cuban people in arms, signed the present instrument. Salvador Cisneros, president; Rafael Manduley, vice-president; Pedro Pinan de Villegas, Lope Recio, Fermin Valdes Dominguez, Francisco Diaz Silveira, Dr. Santiago Garcia, Rafael Perez, F. Lopez Leyva, Enrique Cespedes, Marcos Padilla, Raimundo Sanchez, J. D. Castillo, Mariano Sanchez, Pedro Aguilera, Rafael M. Pontuondo, Orencio Nodarse, José Clemente Vivanco, Enrique Loynaz Del Castillo, Severo Pina.

ELECTION OF GOVERNMENT.

The constituent assembly met again on the 18th of the said month and year, all the said representatives being present. They proceeded to the election of members who are to occupy the offices of the Government council, the general-in-chief of the army of liberation, the lieutenant-general, and the diplomatic agent abroad. The secret voting commenced, each representative depositing his ballot in the urn placed on the chairman's table, after which the count was proceeded with, the following being the result:

President: Salvador Cisneros, 12; Bartolome Maso, 8.

Vice-president: Bartolome Maso, 12; Salvador Cisneros, 8.

Secretary of war: Carlos Roloff, 18; Lope Recio Loinaz, 1; Rafael Manduley, 1.

Secretary of the treasury: Severo Pina, 19; Rafael Manduley, 1.

Secretary of the interior: Dr. Santiago Garcia Canizares, 19; Carlos Dubois, 1.

Secretary of the foreign relations: Rafael Portuondo, 18; Armando Menocal, 1 blank, 1.

Subsecretary of war: Mario Menocal, 18; Francisco Diaz Silveira, 1; blank, 1.

Subsecretary of the treasury: Dr. Joaquin Castillo, 7; Francisco Diaz Silveira, 5; José C. Vivanco, 3; Armando Menocal, 3; Carlos Dubois, 1; blank, 1.

Subsecretary of the interior: Carlos Dubois, 13; Oreneio Nodarse, 5; Armando Menocal, 1; blank, 1.

Subsecretary of foreign relations: Fermin Valdes Dominguez, 18; Rafael Manduley, 1; blank, 1.

Therefore, the following were elected by a majority of votes:

President, Salvador Cisneros; vice-president, Bartolome Maso; secretary of war, Carlos Roloff; secretary of the treasury, Severo Pina; secretary of the interior, Dr. Santiago Garcia Canizares; secretary of foreign relations, Rafael M. Portuondo; subsecretary of war, Mario Menocal; subsecretary of the treasury, Dr. Joaquin Castillo; subsecretary of the interior, Carlos Dubois; subsecretary of foreign relations, Dr. Fermin Valdes Dominguez.

The vice-president of the assembly immediately installed the president in the office of the government council that had been conferred upon him; the latter in turn installed those of the other members elected, who were present, all entering on the full exercise of their functions after previously taking the oath.

On proceeding to the election of those who were to occupy the positions of general in chief of the army, lieutenant-general, and diplomatic agent abroad, the

following citizens were unanimously elected by the assembly for the respective places: Major-General Maximo Gomez, Major-General Antonio Maceo, and Citizen Tomas Estrada Palma. All these appointments being recognized from that moment.

LAWS FOR THE CIVIL GOVERNMENT AND ADMINISTRATION OF THE REPUBLIC.

CHAPTER I.—TERRITORIAL DIVISION.

ARTICLE I. The Republic of Cuba comprises the territory occupied by the Island of Cuba from Cape San Antonio to Point Maisi and the adjacent islands and keys.

ART. II. This territory shall be divided into four portions, or states, which will be called Oriente, Camaguey, Las Villas or Cabanacan, and Occidente.

ART. III. The State of Oriente includes the territory from the Point Maisi to Port Manati and the river Jobabo in all its course.

ART. IV. The State of Camaguey includes all the territory from the boundary of Oriente to the line which starts in the north from Laguna Blanca through the Esteros to Moron, passing by Ciego de Avila, follows the military trocha to El Jucaro in the southern coast, it being understood that the towns of Moron and Ciego de Avila belong to this State.

ART. V. The State of Las Villas has for boundary on the east Camaguey, on the west the river Palmas, Palmillas, Santa Rosa, Rodas, the Hannabana River, and the bay of Cochinos.

ART. VI. The State of Occidente is bordered on the Las Villas, extending to the west to Cape San Antonio.

ART. VII. The islands and adjacent keys will form part of the states to which they geographically belong.

ART. VIII. The State of Oriente will be divided into ten districts, which shall be as follows: Baracoa, Guantanamo, Sagua de Tanamo, Mayari, Santiago, Jiguani, Manzanillo, Bayamo, and Tunas.

Camaguey comprises two—the eastern district and the western district.

Las Villas comprises seven—Sancti-Espiritus, Trinidad, Remedios, Santa Clara, Sagua, Cienfuegos, and Colon.

That of Occidente comprises sixteen—Cardenas, Matanzas, Union, Jaruco, Guines, Santa Maria del Rosario, Guanabacoa, Habana, Santiago de las Vegas, Bejucal, San Antonio, Bahia Honda, Pina del Rio, and Mantua.

ART. IX. Each of these districts will be divided into prefectures, and these in their turn into as many subprefectures as may be considered necessary.

ART. X. For the vigilance of the coasts there will be inspectors and watchmen appointed in each State according to the extent of the coasts and the number of ports, bays, gulfs, and salt works that there may be.

ART. XI. On establishing the limits of the districts and prefectures, the direction of the coast, rivers, and other natural boundaries shall be kept in mind.

CHAPTER II.—OF THE GOVERNMENT AND ITS ADMINISTRATION.

ART. XII. The civil government, the administration, and the service of communications devolve upon the department of the interior.

ART. XIII. The secretary of the interior is the head of the department; he will appoint the employees and will remove them whenever there will be justifiable cause, and will have a department chief to aid him in the work of the department.

ART. XIV. The department chief will keep the books of the department, take care of the archives, will be the manager of the office, and will furnish certifications when requested to do so.

ART. XV. The department of the interior will compile from the data collected by the civil governors the general statistics of the Republic.

ART. XVI. The civil governor will inform the department of the interior as to the necessities of his state, will order the measures and instructions necessary for compliance with the general laws of the Republic and the orders given by that department, will distribute to the lieutenant-governors the articles of prime necessity which will be delivered to them for that purpose, will communicate to his subordinates the necessary instructions for the compilation of statistics, and will have a subsecretary who will help him in the discharge of his functions.

ART. XVII. The lieutenant-governor will see that the orders of the governors are obeyed in the district, and will have the powers incident to his position as intermediary between the civil governors and the prefects. In case of absolute breach of communication with the civil governors, they will have the same powers as the latter.

ART. XVIII. The prefect shall see that the laws and regulations communicated to him by his superior authorities are complied with. All residents and travelers are under his authority, and, being the highest official in his territory, he in his turn is bound to prevent all abuses and crimes which may be committed.

He will inform the lieutenant-governor as to the necessities of the prefecture; will divide these into as many subprefectures as he may consider necessary for the good conduct of his administration; he will watch the conduct of the subprefects; he will distribute among them with equity the articles delivered to him, and he will have all the other powers incident to him in his character of intermediary between the lieutenant-governor and the subprefects.

ART. XIX. The prefect will also have the following duties: He will harass the enemy whenever possible for him to do so; will hear the preliminary information as to crimes and misdemeanors which may be committed in his territory, passing the said information to the nearest military chief, together with the accused and all that is necessary for the better understanding of the hearing. He will not proceed thus with spies, guides, couriers, and others who are declared by our laws as traitors and considered as such, for these, on account of the difficulty of confining them or conducting them with security, shall be tried as soon as captured by a court consisting of three persons, the most capable in his judgment in the prefecture, one acting as president and the others as members of the court. He will also appoint a prosecuting officer, and the accused may appoint some one to defend him at his pleasure.

After the court is assembled in this form, and after all the formalities are complied with, it will in private judge and give its sentence, which will be final and without appeal; but those who form the said court and who do not proceed according to our laws and to natural reason will be held responsible by the superior government. Nevertheless, if in the immediate territory there be any armed force, the accused shall be sent to it with the facts in order that they shall be properly tried.

The prefects will take the statistics of his prefecture, setting down every person who is found therein, noting if he is the head of a family, the number of the same, his age, his nationality and occupation, if he is a farmer the nature of his farm, and if he has no occupation the prefect will indicate in what he should be employed. He will also keep a book of civil register in which he will set down the births, deaths, and marriages which may occur.

He will establish in the prefecture all the factories that he can or may consider necessary in order to well provide the army, as it is the primary obligation of all employees of the Republic to do all possible so that the hides shall not be lost, and organizing in the best manner, and as quickly as may be, tanneries, factories of shoes, rope, blankets, and carpenter and blacksmith shops.

He will not permit any individual of his district to be without occupation. He will see that everyone works, having the instruments of labor at hand in proportion to the inhabitants of his territory. He will protect and raise bees, he will take care of abandoned farms, and will extend as far as possible the zones of agriculture.

As soon as the prefect learns that the secretary of the interior or any delegate of this authority is in his district he will place himself under the latter's orders. This he will also do on the arrival of armed forces, presenting himself to their chief in order to facilitate the needed supplies and to serve him in every possible manner. He will have a bugle to warn the inhabitants of the enemy's approach; he will inform the nearest armed force when his territory is invaded. He will collect all horses and other animals suitable for the war and lead them to a secure place, so that when the army may need them or they may be required by the civil authorities to whom they may appertain.

He will provide the forces that may be, or pass through his territory with whatever they may need, which may be within his power, and especially shall he provide guides and beeves and vegetables which the chief may require to maintain the said forces. He will also deliver the articles manufactured in the shops under his immediate inspection, demanding always the proper receipts therefor.

He will also provide the necessary means for the maintenance of all the families of the territory, especially those of the soldiers of the army of liberation.

Until otherwise decreed he will celebrate civil marriages and other contracts entered into by the residents of his prefecture: he will act in cases of ordinary complaints and in the execution of powers and wills, registering the same in a clear and definite manner, and issuing to the interested parties the certificates which they may require.

ART. XX. The subprefects will see that the laws and orders communicated to him by his superior authorities are obeyed in territory under his command; he will inform the prefect as to the necessities of the subprefecture and will see to the security and order of the public; arresting and sending to the prefects those who may travel without safe-conduct, seeing that no violation of law whatsoever is perpetrated, and will demand the signed authority of the civil or military chief who has ordered a commission to be executed.

ART. XXI. The subprefects will compile a census in which the number of inhabitants of a subprefecture will be stated and their personal description; he will keep a book of the births and deaths which will occur in his territory, and of all this he *will give account* at the end of the year. He will invest the means provided by the *prefect to pay the public* charges, and if the said resources are insufficient he will

collect the deficit from the inhabitants; he will not authorize the destruction of abandoned farms, whether they belong to friends or enemies of the Republic, and he will inform the prefect of the farms which are thus abandoned.

ART. XXII. For the organization and better operation of the states manufactories a chief of factories shall be appointed in each district, who will be authorized to establish such factories which he may deem convenient, employing all citizens who, on account of their abilities can serve, and collecting in the prefectures of his district all the instruments he can utilize in his work. These chiefs will be careful to frequently inspect the factories, to report any defects which they may notice, and to provide the superintendents with whatever they may need, that the work may not be interrupted.

Together with the prefect he will send to the department of the interior the names of the individuals he considers most adapted to open new shops, and on the first day of each month he will send to that department a statement of the objects manufactured in each shop of his district, indicating the place of manufacture, what remains on deposit, what has been delivered, with the names of commanders of forces, civil authorities, or individuals to whom they were delivered.

ART. XXIII. The coast inspectors will have under their immediate orders an inspector, who will be his secretary, who will occupy his place in his absence or sickness, and as many auxiliaries as he may deem convenient. He may demand the aid of the prefects and armed forces whenever he may consider it necessary for the better exercise of his functions. The duties of the inspectors will be to watch the coasts and prevent the landing of the enemy, to be always ready to receive disembarkments and place in safety the expeditions which may come from abroad, to establish all the salt works possible, to capture the Spanish vessels which frequent the coasts on his guard, and to attend with special care to the punctual service of communications between his coast and foreign countries.

ART. XXIV. The coast guards will acknowledge the inspector as their superior, will watch the places designated to them, and will execute the orders given.

ART. XXV. The lieutenant-governors, as well as the inspectors of whatever class, will have their residence, wherever the necessity of their office does not prohibit it, in the general headquarters, so that they can move easily, furnish the necessary aid to the army, and carry out the orders of the military chief.

Country and liberty.

OCTOBER 17, 1895.

The secretary of the interior, Dr. Santiago Garcia Canizares, being satisfied with the preceding law, I sanction it in all respects.

Let it be promulgated in the legal form.

SALVADOR CISNEROS BETANCOURT,
The President.

OCTOBER 18, 1895.

LAW OF CIVIL MARRIAGE.

ARTICLE I. Males of 18 years of age and females of 14 can contract marriage.

ART. II. To contract marriage they must go to the notary of their residence, two witnesses being present who will sign the contract with the parties and the notary.

ART. III. The marriage contract may contain any agreement or convention which the contracting parties may agree upon and which is not opposed to the nature of the contract nor to law.

ART. IV. If one of the contracting parties is less than 20 years of age, the marriage can be contracted with notice to the father, the mother, or the guardian, according to the circumstances, and if these oppose the celebration of the marriage, the judge of the district, with knowledge of the facts, will decide the question.

ART. V. The following reason will prevent marriage: Consanguinity in the direct line. In the collateral, brother and sister can not marry; it is null by the relationship in said degrees, or by being contracted by fraud or by force. It is completely dissolved for incompatibility by a chronic and contagious disease, or one which will cause impotency, and by adultery; moral or physical ill treatment of the wife gives to the wife the right to demand from the husband, when they live apart, to bear the expenses of the marriage; if the woman commits adultery she loses this right.

ART. VI. In case of separation, the male children of 14 years of age and upward and female children of 12 and upward may elect between their parents as to residence. Those less than 3 years of age must remain with the mother. Those who have not yet reached the age of puberty, but are older than 3 years, remain with the parent who has not given the motive for the separation. This is in case that the separation is caused by some guilt. If it occurs on account of sickness, the children will remain *with the one who* did not desire the separation. If the *separation is on account of incompatibility*, the parents must agree as to this

point. On reaching the age of 3 years, the children who until then have been with the mother, the question of their custody will be governed by the other provisions of this article.

When the male reaches the age of 14 and the female of 12, whatever may have been their previous residence, they may alter it.

ART. VII. Marriage being once dissolved, the parties may remarry, but the woman shall not do so until twelve months have elapsed, in order to avoid confusion of paternity.

ART. VIII. Civil marriage is placed on an equal footing, as to duty and effects, with that recognized by our former legislation, and celebrated by the intervention of the church.

ART. IX. The promise of marriage does not have any other result than that of the payment of the penalty, which must be stipulated by the contracting party. If no penalty is stipulated, no duty of payment is incurred.

ART. X. The seduction of a female, whether she be a minor or not, obliges the seductor to marry the seduced or to pay a penalty in proportion to the fortune of both, which the judge of the district must determine.

Country and liberty.

PROVIDENCIA, *September 25, 1895.*

GARCIA CANIZARES.
Secretary of the Interior:

Let the foregoing be promulgated in the legal form, it having my sanction.

Providencia, September 25, 1895.

SALVADOR CISNEROS BETANCOURT,
President.

CIVIL MARRIAGE.

Instructions which must be observed by the prefects of the Republic of Cuba in the celebration of civil marriage, exercising the function which is given them by the provisional law passed by the Government Council on the 25th of September, 1895.

ARTICLE I. The prefect of the residence of the wife, who is the only one competent to celebrate the marriage, will demand of the parties a copy of their certificate of birth, so that they can prove their marriageable age, which of the male is 18 years and of the female 14 years.

ART. II. If either of the contracting parties should not have that document, by the omission, suppression, or burning of the register, or for any other cause, this credential may be substituted by a certificate of the authorities as to the nationality or residence, in which certificate the cause of the absence of the original certificate shall be stated (after previous investigation and on information received as to its omission) the names of the parents, their civil status, and the year and month of the birth of the contracting parties.

ART. III. If it appears that the contracting parties are over 20 years of age the prefect will proceed to the celebration of the civil marriage without further requisite than to give it publicity, for which purpose he shall affix notices in the most frequented places of the prefecture.

ART. IV. But if either of the parties is less than 20 years of age the contract must not only be made public, as previously stated, but notice given to the father, the mother, or the guardian, so that if these oppose the marriage it may be suspended until, with a full knowledge of the facts, the question be decided by the judge, who must investigate, the prefect fixing a time for the opposing parties to establish and justify their position, which must not be longer than eight days.

ART. V. In all cases the prefect will demand from the contracting party their assurance of the consent of each other, or at least that of the bride, and of her ability to enter into the matrimonial contract, which requisite the prefect may omit if he himself possesses knowledge of the circumstances.

ART. VI. If there are no disabilities to the marriage the prefect will register in a book entitled Book of Civil Marriages Contracted in the Prefecture ——, designating on the first page the year and making an index at the end in alphabetical order.

ART. VII. The contract will be formulated in the following terms:

"Formula of the marriage of persons of 20 years and upward:

"In the prefecture of —— on the —— day of 189—, before me, the prefect ——, and before me, the undersigned secretary, there appeared —— and ——, of 20 years and upward, the former born and resident of ——, son of (here the names *of parents*), and the latter born and resident of the prefecture ——, daughter

(here the names of parents), who are known to the prefect and to myself, the secretary, or who, unknown, were presented to M. and P., who act as witnesses, who affirm that that they know them, or at least that they know her, and they so declare and affirm."

"The contracting parties thereupon say, in the presence of these witnesses and those to this instrument, A and B, called for that purpose, that of their own free will, and without any violence, they promised to marry civilly, which marriage they now celebrate, and they agree to live in complete harmony and conjugal union, and never to separate unless because of incompatibility, or for any of the other reasons allowed by law, declaring that this marriage is for the welfare and honor of both, and for their offspring, and as the laws and customs of good government require (here any agreement made between the contracting parties shall be inserted, besides the nuptial contract), and the register will thus end; and in order that this marriage shall be known, and always and in all cases have its legal force, the prefect orders the minutes of this contract to be drawn in the said terms, signing with the contracting parties, and the said witnesses (if they can write, and if they can not others, at their request, may do so), to all of which I, the secretary, certify."

FORMULA FOR THE MARRIAGE OF THOSE LESS THAN TWENTY YEARS OF AGE.

The beginning will be as in the above formula, adding that the contracting parties being minors, the father, mother, or guardian appeared, who declared their assent and signed (if they can write) the register, and if not, a person of their confidence whom they may select. The declaration as to register will be the same as in the preceding formula.

FORMULA OF CIVIL MARRIAGE TO WHICH THERE IS OPPOSITION.

After the preamble similar to the first formula in the register is declared, that the father, mother, or guardian whosoever has interposed before the competent authority, has dissented, declares the contract not to be proper, as he explains in the following declaration. As to the rest, the register will be as in the first formula to its conclusion.

But in case the father, mother, or guardian do not make any opposition, it shall be so declared in the register that the time fixed having passed and the person having the right to exercise this right having failed to do so, the marriage has been consummated.

NOTE.—Of every marriage there will be formed a file consisting of the copy of the register of birth, of the cedula, of the declaration of the opposition of father, mother, or guardian, and of the decree in which it shall be declared proper, or it is ordered that the marriage shall take place because they have not exercised that right, or because the party opposing has not complied with the law. This file shall be kept for future use.

Country and liberty.

GARCIA CANIZARES,
Secretary of the Interior.

PROVIDENCIA, *September 25, 1895.*

Let the foregoing be promulgated in its legal form, as I sanction the foregoing law in all its parts.

SALVADOR CISNEROS BETANCOURT,
President.

PROVIDENCIA, *September 25, 1895.*

EXTRACT OF THE SESSIONS.

[Republic of Cuba, Provisional Government, secretary of the council—José Clemente Vivanco, secretary of the Government Council and chancellor of the Republic.]

I certify that among the resolutions passed by this council, according to the minute book of the sessions, the following are to be found:

To give two months' time to the chiefs and officers of the last revolution to join the new army of liberation, so as to have their ranks recognized, and four months' time to those in foreign countries to place themselves in communication with the delegates. To allow the Cuban emigrants individual freedom in the nature of their contributions for the revolution. To permit the export of wooden blocks on payment of $5 in gold as tax for each piece. To prohibit absolutely the export of corn and all forage; of cattle, pigs, horses; without allowing anything to enter the towns without the previous payment of taxes.

To prohibit absolutely also the introduction in the towns of all kinds of fruits and articles of commerce which may favor the said towns and indirectly the Government which we are fighting.

San Andres de la Rioja, October 9, 1895.

(Signed) JOSÉ CLEMENTE VIVANCO,
Secretary of the Council.

REGULATIONS FOR THE SERVICE OF COMMUNICATIONS.

ARTICLE 1. The secretary of the interior will be the postmaster-general of the whole island, and the civil governor the chief of his territory.

ART. 2. The postal service is established between the prefectures of the Republic and between the towns and prefectures near by.

ART. 3. In order to organize the postal service, an inspector will be named for each district; as many chiefs as there are post-offices, and as many couriers and auxiliaries as are necessary for each one.

ART. 4. The inspector is the superior chief in his district of the postal service; under his direction will be the postmasters, couriers, and auxiliaries. He shall organize the service by placing the post-offices in the most convenient places, so that the service shall be carried out with the greatest ease and with the greatest rapidity. He will employ the number of employees that are necessary. He will ask for their resignations whenever there is any justifiable cause for it. He will see that every one shall fulfill his duties, and shall name the hours when the couriers shall depart. He shall correct all defects that come under his notice, propose all modifications which he may think will give a better service, and give an account of all extraordinary services which his subalterns may render in order that they should be registered and rewarded.

ART. 5. The chiefs will reside in the post-office, from which they can not be absent during the appointed hours, and they are to act whenever possible as auxiliaries to the prefect's office. They will receive official and private correspondence, sign receipts for that delivered by mail carriers, setting down the hour of delivery, and they will deliver, under receipt in which they will also put down the time of departure, to the outgoing postman the mail matter in their hands, giving with it a memorandum stating the name of mail carried and the time of departure. They will also see that the post-offices are well attended and have in them the necessary number of horses required for the service, unless in cases where the service is carried on foot. They will report to the inspector the defects they may observe in the service, without forgetting the importance of their position.

ART. 6. The mail carriers will collect daily at the appointed hours, along the route marked out, without delaying on the way nor hurrying their horses except in urgent cases that will be pointed out by the chief. They will have a receipt for the correspondence delivered to them, and will receive in exchange for the receipt a signed memorandum stating what mail they carry; which memorandum they will present to the chief of postal department, so that he may sign it and declare that he has received them, and, after complying with this requisite, change it for a receipt which he will leave in the office of departure.

A great service will be done by the couriers, and for that reason men of known honesty and valor shall be chosen, who are capable of appreciating the service they render their country.

ART. 7. A mail service will be organized in every city occupied by the enemy, and will consist of as many chiefs and carriers as may be considered necessary.

ART. 8. The inspectors of mails will be the immediate superior officer of the service in the town of his residence, and will have under his command the postmasters and mail carriers, and they will exercise their functions in the same manner as the coast inspectors. They will have special care in the selection of employees and in keeping all possible secrecy to elude the vigilance of the enemy.

ART. 9. The postmasters will be considered as the chiefs of mail carriers and will act with the carriers, as the carriers with the drivers, always giving an account of any extra services rendered.

ART. 10. The mail carriers will have charge of receiving from the postmasters the mail matter and carry it out of the cities for delivery to the office of the nearest prefect. They will give and ask for receipts as the drivers and like these must be honest men, sharp and brave enough with courage to overcome the difficulties that may arise in the performance of their important and dangerous mission and worthy to occupy these positions of trust in which they can lend such valuable services to the sacred cause every Cuban is bound to defend.

ART. 11. The inspectors and postmasters will keep a book to record the appointments of employees and the services rendered by them and will make up their archives

with this book and circulars, communications, and official documents that they receive on the copies of those they may have to transmit.

Country and liberty, September, 1895.

Dr. SANITAGO GARCIA CANIZARES,
Secretary of the Interior.

In conformity with the preceding regulations I sanction them in every part; and that it may govern and produce its corresponding effects have it published in the legal form.

Country and liberty.

Residence of the Executive in Limones, the 6th day of October, 1895.

SALVADOR CISNEROS, *President.*

LAW FOR THE ORGANIZATION OF THE PUBLIC TREASURY.

ARTICLE I. All property of whatever description situated in the territory of the Republic comes under the jurisdiction of the secretary of the treasury; therefore this department shall take charge of articles of whatever description brought to this island by expeditions from abroad; this department also has the faculty of raising public loans and general taxes.

ART. II. The secretary of the treasury will be the superior chief of his department throughout the Island of Cuba, and through him the subaltern officers will receive the orders given by the council. The duties of the secretary will be to determine, on information of the collectors, the taxes which shall be paid in each state and the form in which they shall be collected, to nominate the employees of his department and to discharge them for justifiable cause. He will deliver to the chiefs of corps and civil governors the articles which he receives from abroad; he will give a receipt for the articles or sums of money which from any source whatever may be collected by the public treasury. He may trade with the merchandise belonging to the Republic; he may lease or sell whatever be convenient and will present an account every three months to the council of the funds belonging to the Republic.

ART. III. To facilitate the work of the treasury a chief of department will be appointed who will act as general comptroller, and in each State a collector and a secretary of the administration of the treasury, and for each district a delegate.

ART. IV. The chief of the department, or general comptroller, will have charge of the archives of the department, will keep the books in due form, and will take part in all the collections and disbursements which may occur.

ART. V. The collector will represent in each State the secretary of the treasury, he will give information as to the taxable property in his State, he will dictate the necessary measures to carry out the general orders communicated to him by the secretary of the treasury, he will collect by means of agents the taxes fixed upon, and he will send to the department as soon as possible the funds collected; nevertheless he may deliver the amounts he may deem necessary to the chiefs of the different army corps, who will give a receipt for them and justify their expenditure. The collectors will monthly send to the department a statement of their operation.

ART. VI. The secretary of the administration of the treasury will keep the archives of his respective State, will keep the books in due form, and will take part in the operations of the collector.

ART. VII. The delegates or agents will be the collectors of taxes in each district, and the commissioners will see that the orders of the collectors of the State are carried out. They may appoint auxiliaries whenever necessary, and are authorized to demand the aid of the prefects and armed forces for the better fulfillment of their commissions.

Country and liberty.

Canaster, October 16, 1895.

SEVERO PINA,
Secretary of the Treasury.

In conformity with the previous law, I sanction it in all its parts. Let it be promulgated in legal form.

Country and liberty, October 18, 1885.

MANGOS DE BARAGUA.

SALVADOR CISNEROS BETANCOURT,
President.

INSTRUCTIONS TO THE OFFICERS OF THE DEPARTMENT OF THE TREASURY OF THE REPUBLIC OF CUBA.

ARTICLE I. According to article 18 of the constitution and the decree of the general in chief of the 20th of September last, the military chiefs shall give the necessary aid to the officers of the treasury for the better fulfillment of their duties.

ART. II. With the aid of the armed forces, they will proceed to the destruction of those plantations, whatever be their nationality, which will refuse to pay the taxes decreed by the Government of the Republic.

ART. III. As a basis for the rate of tax, the production of the plantations shall serve as well as the price of their products, taking into consideration the expense of transportation.

ART. IV. The amount of the tax will be paid in advance in gold or in drafts on New York, Paris, or London in the form agreed upon.

ART. V. All kinds of traffic with the enemy is absolutely prohibited, only the following articles and products are allowed to be exported:

Coffee and cocoa, $4 per hundredweight.

Wood in blocks, $8 per thousand feet or $3 apiece, as will best suit the interests of the Republic and the functionary authorizing the exportation.

Guana (a textile palm), $4 per hundredweight.

Wax, $4 per hundredweight.

Fattened steers, $3 per head.

Cheese, $2 per hundredweight.

In regard to mines, tobacco, and plantains for exportation, it is left to the judgment of the collector of the treasury.

ART. VI. The exportation of wood or guana (the latter until December 6) will only be permitted when worked or packed by individuals who are in the confidence of our authorities.

ART. VII. The exportation of cattle will only be allowed when, in the judgment of the authority, they run imminent risk of falling into the hands of the enemy.

ART. VIII. The collector of the treasury of each State may suspend, temporarily, the exportation of the products referred to in Article V, immediately giving an account of it to the secretary of the treasury for final adjudgment.

Sabanilla del Contra Maestre, October 24, 1895.

SEVERO PINA,
Secretary of the Treasury.

In conformity with the previous law, I sanction it in all its parts. Let it be promulgated in legal form.

Sabanilla, October 25, 1895.

SALVADOR CISNEROS BETANCOURT,
President.

EXTRACT OF THE SESSIONS OF THE GOVERNMENT COUNCIL, REPUBLIC OF CUBA.

Secretary of the Government José Clemente Vivanco, secretary of the Government Council and chancellor of the Republic, I certify that in the minute books of the sessions celebrated by this council the following resolutions are found:

SEPTEMBER 19, 1895.

To appoint a secretary of the Government and chancellor of the Republic, José Clemente Vivanco. To send the appointments of general in chief, lieutenant-general, and delegate plenipotentiary abroad to Maj. Gen. Maximo Gomez, Maj. Gen. Antonio Maceo, and Tomas Estrada Palma, respectively.

To appoint as civil governor of Camaguey, Dr. Oscar Primelles, and of Oriente, Rafael Manduley.

To complete the system of the division of the territory of the island into zones, and that the subsecretary of war, in the absence of the secretary, agree with the general in chief as to the organization of the army of liberation.

SEPTEMBER 20, 1895.

To give two months' time to the chief and officers of the past revolution to join the newly organized army of liberation, for the recognition of their grades, and four months' time to those outside of the island. That each secretary of state may name a chief of his department. To appoint as director of the treasury in Oriente Diego Palacios, and in Camaguey, Col. Lope Recio Loynaz. That the secretary communicate with the general in chief so the latter may indorse the authorities, passes, and orders given by the Government and require all the forces of the army of liberation to respect and obey them.

To ask the general in chief for Capts. Francisco Garcia, Manuel Merrero, and Ensign Enrique Boza, as their services are needed by the Government. That the Cuban emigrations shall be at liberty as to the manner of contributing to the revolution.

To ask from abroad a copy of all the decrees passed by the government of the last revolution, and to order that in conformity with the minutes sent from here all documents shall be printed emanating from the Government as well as the constitution passed by the constituent assembly which shall be placed in our archives.

SEPTEMBER 24, 1895.

To publish a circular of the secretary of the interior, addressed to the prefects, subprefects, and other functionaries of civil order, recommending them to fulfill their respective duties.

To approve the order given by the general in chief as to the respect due peaceful families and their interests, excepting in cases of military necessity or on account of manifest or suspected treachery, and that the secretary of the interior address such communication to the civil governors advising them of this resolution.

To appoint chief of postal service for the eastern and western district of Camaguey, Manuel Manero, and Francisco Garcia, respectively, and to confirm the appointments of prefects temporarily made by the general in chief.

To ask the general in chief to order all the chiefs of army corps to send to the secretary of war a detailed account of the chiefs and officers under his orders, their record of service, the positions which they occupy, and their respective abilities.

To communicate to Maj. Gen. Carlos Roloff that his aides, Francisco Diaz Silveira and Orencio Nodarse remain with this Government.

SEPTEMBER 25, 1895.

To permit the export of wood in blocks after the payment of $5 in gold for each block. To absolutely prohibit the sale of corn and all kinds of forage, cows, oxen, and horses, permitting only other animals to be taken within a radius of 6 leagues from the towns on a payment of the tax.

That through the secretary of the treasury a detailed statement of the tax-paying property shall be sent to the prefects and military chiefs.

To approve the provisional law of civil marriage passed June 4, 1869, by the Chamber of Representatives of the past revolution and to put it in force on motion of the secretary of the interior.

To approve and enforce the instructions as to said law, which were passed June 21, 1869, by the said chamber.

To confirm the appointment of inspectors of coasts and coast guards made previously by the general in chief.

OCTOBER 5, 1895.

That each secretary of state shall present to the council such projects of laws and regulations as shall be in force in their respective departments, and that the secretary of foreign relations, together with the subsecretary, the acting secretary of war, shall draw a project of criminal procedure for deliberation and approval by the council.

OCTOBER 6, 1895.

To absolutely prohibit the introduction in the towns of all articles of commerce which, favoring trade indirectly, aid the enemy's Government, and to confirm the appointment of the inspector of shops and prefectures in the district of Tunas to Citizen Luis Marti, provisionally given by the general in chief of the third division José M. Capote, on September 17, 1895.

OCTOBER 16, 1895.

That the secretary of the Government shall collect all the laws, rules, decrees, and all other orders of this council and an extract of the resolutions for publication in book form for an edition of 500 copies.

To approve the project of the law for the organization of the public treasury presented by the secretary of the treasury.

To approve the law for the civil government and administration of the Republic, presented by the secretary of the interior.

OCTOBER 21, 1895.

To send a communication to the chiefs of army corps; to send the secretary of the treasury a detailed account of all the contracts made by them since the beginning of the war, in order that in conformity with article 21 of the constitution they be approved.

To give military consideration to all civil functionaries, appointing for this purpose a commission composed of the secretary of the interior and the subsecretary of war, so that they may present a report as to the rules to be followed in this behalf.

OCTOBER 24, 1895.

To approve the project as to instructions of the officers of the public treasury presented by the secretary of the treasury.

To approve the report as to the military considerations to be enjoyed by the civil functionaries, presented by the secretary of the interior and the subsecretary of war, commissioned for this purpose at the last session, which is as follows:

The president of the Republic, that of general in chief of the army; the vice-president, and the secretaries of state, of major-generals.

The secretary of the council and chancellor, brigadier-general; the chiefs of departments of states, civil governors and collectors of the treasury, colonels; the lieutenant-governor, delegate of the treasury and the secretary of administration, of the treasury, majors; the prefects, the inspectors of shops, of coast and communication, that of captains; the subprefects, and ensigns.

All these considerations shall be enjoyed by them unless they have higher rank.

OCTOBER 25, 1895.

The following decree was approved:

ARTICLE I. No one can be punished by death, or by imprisonment or reprimand, without having been previously judged by court-martial.

ART. II. The factories, barns, houses, fruit trees, and useful wood trees will be respected by all the citizens of the Republic.

ART. III. Housebreaking and unjustifiable raids will be severely punished.

ART. IV. No citizen can be dispossessed from the house he occupies without justifiable motive.

ART. V. The forces on the march, detachments, or commissions will not occupy inhabited houses without the consent of their owners, unless the exigencies of the war require it or in extraordinary cases, when it will be justified by the officer who orders it.

And for the publication thereof in accordance with the resolution of the 16th instant, I publish the present compilation, which is a true copy of the originals, on file in the archives of my secretaryship.

Country and liberty.

Sabanilla, October 25, 1895.

JOSÉ CLEMENTE VIVANCO,
Secretary of the Council.

There will soon be published the laws of organization and military ordinances drafted by the general in chief and approved by the council, which shall be joined to the present compilation, C.

[COAT OF ARMS OF CUBAN REPUBLIC.]

In the name of the Republic of Cuba by delegation of the Cuban people in arms. The constituent assembly resolved by acclamation on this day to confer on Tomas Estrada Palma, the diplomatic representative and agent abroad, the title of delegate plenipotentiary of the Republic of Cuba.

In witness whereof we have affixed our signatures in Jimaguayu on the 18th of September, 1895.

Salvador Cesneros, B., President; Rafael Manduley, Vice-President; Enrique Loinaz del Castillo, Severo Piña, Fermin Valdes Dominguez, Rafael Perez Morales, Raimundo Sanchez, J. D. Castillo, Pedro Pinan de Villegas, Pedro Aguilera, Marcos Padilla, Rafael M. Portuondo, Dr. Santiago Garcia Canizares; Lope Recio, L.; Orencio Nodarse, secretary; Franco Diaz Silveira, Enrique Cespedes, Mariano Sanchez Vaillant, F. Lopez Leiva, secretary; José Clemente Vivanco, secretary.

D.

ARMY HEADQUARTERS AT CUMANAYAGUA.

Mr. ALFREDO REGO.

MY DEAR SIR: I had the pleasure to receive your polite note. I see by it the generosity of your heart, and I thank you, in the name of my superior officers, to whom I will communicate your humanitarian act.

I send the committee desired to bring back the prisoners. It takes this letter to you and is composed of Benito Mesa and Telesforo Ramirez. I beg you to give them the necessary aid, promising you that your men will be respected by this garrison.

Yours, truly,

(Signed.) JOSÉ BRETONES, *Lieutenant.*

O

54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 167.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE SECRETARY OF THE INTERIOR, TRANSMITTING STATEMENT OF ACCOUNT RELATIVE TO THE CLAIM OF THE SAC AND FOX INDIANS OF MISSISSIPPI, NOW RESIDING IN THE STATE OF IOWA.

DEPARTMENT OF THE INTERIOR,
Washington, March 12, 1896.

SIR: I have the honor to herewith transmit a statement of the claim of the Sac and Fox Indians of the Mississippi, now residing in the State of Iowa, prepared in conformity with the provisions of the act of March 2, 1895 (28 U. S. Stat. L., 876–903).

By this statement it will be seen that the sum of $42,893.25 is found due this band of the Sacs and Foxes of the Mississippi, payable from funds belonging to the tribe.

Besides the annuities accruing to the tribe under various treaties, there is also the sum of $55,058.21 now to their credit in the Treasury, in cash, upon which interest at the rate of 5 per cent is annually paid to them under the provisions of the act of April 1, 1880 (21 U. S. Stat. L., 70).

As a method of settlement of the aforesaid indebtedness of the tribe to the Iowa branch one of the following plans is recommended, viz:

First. That authority be granted by Congress for this Department to pay to the Iowa Sacs and Foxes the sum of $42,893.25 out of the aforesaid tribal fund of $55,058.21, with accrued interest thereon from January 1, 1896, to date of payment.

Second. That the Secretary of the Treasury be authorized and directed to transfer on the books of his Department $42,893.25 to the credit of the Iowa Sacs and Foxes, from the tribal fund of $55,058.21, interest thereon at the rate of 5 per cent per annum to begin on January 1, 1896.

Third. That a sum not exceeding $4,289.32 be annually retained from the proportionate share of the annuities due the Sac and Fox of the Mississippi tribe of Indians under their several treaties, the same to be paid to the Iowa branch of said tribe in addition to their proportionate share of the tribal annuities until the indebtedness of the latter against the former shall be liquidated, and that interest at the rate of 5 per cent per annum from January 1, 1896, shall be allowed on deferred payments, to be paid from the income on the invested fund ($55,058.21) of the tribe now in the Treasury.

Of these three plans I recommend the adoption of the second one as being just to both parties.

In accordance with the requirements of the aforesaid act of March 2, 1895, directing that full opportunity to be heard be given to all parties interested, notice was given to the memorialists, through their attorney, of the finding in their behalf, and also to the Oklahoma branch of the tribe of the finding against them.

The attorney for the former filed protest in behalf of the memorialists, the objections to said finding being set out in the inclosed copy of a communication from Messrs. J. M. Vale and R. V. Belt, dated February 6, 1896.

A copy of Department answer thereto, dated the 12th instant, confirming the finding, is also herewith inclosed.

The Oklahoma Sacs and Foxes, through their delegates Mah ko sha toe and Moses Keokuk, also filed protest against the said finding, but have since, orally, through the delegates named, now in this city, withdrawn their objections to the aforesaid "Statement of account."

Very respectfully,

HOKE SMITH, *Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
Washington, January 30, 1896.

SIR: I herewith hand you, as attorney for that branch of the Sac and Fox of the Mississippi tribe of Indians, residing in the State of Iowa, a copy of an account prepared in the Department, in conformity with the provisions of the act of March 2, 1895, of their claims for their shares of the tribal annuities under the several treaties with the tribe.

Notice of this accounting has been given to the Oklahoma branch of the tribe, and they have been requested to file their objections thereto, if any, within a reasonable time.

Very respectfully,

HOKE SMITH, *Secretary.*

Mr. J. M. VALE,
Atlantic Building, City.

Statement of account, prepared in the office of the Secretary of the Interior, in conformity with the following provision contained in the Indian appropriation bill for the fiscal year ending June 30, 1896 (act of March 2, 1895, 28 Stat. L., 876–903), to wit:

That the Secretary of the Interior be, and he is hereby, directed to examine the claim of the Sac and Fox Indians of Mississippi, now residing in the State of Iowa, as set forth in their memorial presented to Congress (Senate Miscellaneous Document Numbered Forty-eight, Fifty-third Congress, third session), for the payment of annuities and other sums from the tribal funds of said Sac and Fox Indians of Mississippi and any and all claims of that portion of the tribe residing in Iowa, and to ascertain whether, under any treaties or acts of Congress, any amount is justly due them as a portion of said tribe from those of said tribe now in Oklahoma by reason of any unequal distribution of tribal annuities, land funds, or funds from other sources; and if so, how much, giving full opportunity to all parties in interest to be heard, and to report his conclusions to Congress at the next assembling thereof.

The claims of the Iowa branch of the Sacs and Foxes, as set out and described in the above-named Senate document, consist of the following items, viz:

FIRST CLAIM.—"For their proportionate shares of the tribal annuities from 1853 *to 1866, both inclusive,*" amounting to $143,745.80.

Specification.—"*From* the time of the return to Iowa of that portion of the Sac and *Fox Indians of Mississippi* now residing in that State, 'twelve or fifteen years'

prior to 1867, they received no portion of the tribal annuities and no aid or support from the United States. They were not during that time, have not since been, and are not now supported by the United States, but support themselves with the aid of the portion of the tribal annuities received since the year 1867. Prior to 1867 those of the tribe residing in the State of Kansas received the whole of the tribal annuities. The aggregate of the payments made during that period, say, from 1853 to 1866, both inclusive," is $859,835.42.

SECOND CLAIM.—"For their just proportionate shares of the tribal annuities for the period from 1867 to 1894, both inclusive, allowing them for said period their proportionate share of the $5,000 for support of manual-labor school, of the $5,000 for national government of the tribe, and of the amount used for physicians and medicines the amount of this item of their claim will be about $157,183.45."

Specification.—"For the period from 1867 to 1894, both inclusive, twenty-eight years, the tribal annuities have aggregated the sum of $1,428,000. Of that sum those of the tribe residing in the State of Iowa have received * * * in cash annuity payments and in expenditures made for their benefit the total sum of $354,508.76. During the same period those in Kansas, subsequently removed to Oklahoma, have received in cash annuity payments and in expenditures for their benefit $1,063,491.24.

"During said period, from 1867 to 1894, both inclusive, the aggregate per capita payments made to those in Kansas, afterwards removed to Oklahoma, is 21,265 (taking the number for 1866 for the number of 1867, no number being given for the latter year), and to those in Iowa is 11,875, an aggregate of 33,140 per capita payments. The aggregate of the annuities for that period is $1,428,000, of which those in Iowa should have received $\frac{11875}{33140}$, equal to $511,692.21; whereas during said period they have only received $354,508.76, showing a difference against them of $157,183.45."

THIRD CLAIM.—"That there is justly due them from the appropriation of $147,393.32 for land ceded by the treaty of 1867 at least $50,302.84, with interest thereon at 5 per cent from 1873, amounting to $57,848.27, and that there should be a readjustment of the interest payments on the balance remaining of said ceded land appropriation consequent upon the allowance and payment of this last item of their claim."

Specification.—"By the treaty of 1867 all the lands of the reservation in Kansas not ceded by the treaty of 1859 were ceded to the United States for the sum of $147,393.32." Of said sum, $92,335.21 "went to the use and benefit of those members of the tribe then residing in the State of Kansas, whose removal to a reservation where they now reside in Oklahoma was provided for in the treaty of 1867"—equal to a per capita of $172.57. "On this basis those of the tribe residing in Iowa should have received $50,302.84," still leaving a balance remaining of the above-named fund of $4,755.27, subject to distribution between all the members of the tribe—both those residing in Oklahoma and in Iowa.

There are other specifications set out in the memorial which might be classed as "general," which will be taken up and referred to later.

The specific claims of the Iowa branch for their share of the tribal annuities and of proceeds of lands sold arise under the following treaties and acts of Congress, viz:

Treaty of 1804.—By the third article of this treaty (7 Stat. L., p. 84) goods "suited to their circumstances," guaranteed to them by article 14 of the treaty of January 9, 1789 (7 Stat. L., p. 28), to the value of $1,000, were to be furnished yearly to the Sacs and Foxes, in consideration of the cession and relinquishment of certain lands described in the second article of the treaty.

Treaty of 1837.—By section 9 of article 2 of the treaty of October 21, 1837 (7 Stat. L., p. 540), the United States guaranteed to the Sacs and Foxes an annual income of not less than 5 per cent on the sum of $200,000 "to be paid to them each year, in the manner annuities are paid," in consideration of the cession of certain lands provided for in the first article of the treaty.

Treaty of 1842.—Article 2 of this treaty (7 Stat. L., p. 596) guaranteed the Indians an annual "interest of 5 per cent on $800,000," in part consideration for lands ceded by the first article of the treaty.

Treaty of 1859.—The sale of certain surplus lands described in articles 1, 2, and 3 is provided for in article 4 of the treaty of October 1, 1859 (15 Stat. L., 467), the proceeds thereof to be used in the payment of certain debts of the tribe. (See article 5.)

Treaty of 1867.—By article 3 of the treaty of February 18, 1867 (15 Stat. L., 495), the United States agreed to pay the Sacs and Foxes at the rate of $1 per acre for the whole tract of land ceded by articles 1 and 2 of the treaty, said land being subsequently ascertained to contain 147,393.32 acres.

Act of April 10, 1869.—By this act (16 Stat. L., 35) Congress appropriated the sum of $147,393.32, being at the rate of $1 per acre, to pay for the lands above mentioned.

Annuities.—The tribal annuities aggregate $51,000 per annum, and arise as follows, as per treaties noted above, viz:

Article 3, treaty of 1804	$1,000
Article 2, treaty of 1837	10,000
Article 2, treaty of 1842	40,000
Total	51,000

Besides their share of these funds, the Iowa branch claim their share of the $147,393.32 appropriated by the act of April 10, 1869, in payment for lands ceded under the treaty of 1867.

The basis for the foregoing claims of the Iowa branch of the Sacs and Foxes grew out of the removal of the tribe from Iowa to Kansas, under the provisions of the treaty of 1842.

By article 1 of that treaty the tribe ceded to the United States all their "lands west of the Mississippi River to which they have any claim or title, or in which they have any interest whatever," reserving the right to occupy for the term of three years from the time of signing the treaty a certain described portion of the lands ceded, the Government agreeing to assign a tract suitable and convenient, as soon after the ratification of the treaty as convenient, for a permanent and perpetual residence for them and their descendants, "which tract of land shall be upon the Missouri River or some of its waters."

The removal provided for in the aforesaid treaty was effected within the time prescribed therein, Governor John Chambers, of Iowa, ex officio superintendent of Indian affairs of the Iowa superintendency, under date of September 28, 1845, saying:

> The time stipulated by the treaty of October, 1842, with the Sacs and Foxes for their removal from the lands ceded by them to the United States will expire on the 11th of next month, and already a part of the Sacs, led by their energetic and talented chief, Keokuk, are on their way to the lands west of the Missouri. (Report of the Commissioner of Indian Affairs for 1845, p. 481.)

In a report to the Commissioner of Indian Affairs, dated September 1, 1846, United States Indian Agent John Beach, in charge of the Sac and Fox Agency, says:

> With the exception of about 100, in which number were many sick and infirm, the Sacs and Foxes passed out of their former country within the period prescribed by treaty. They, however, did not all continue their emigrating march with equal perseverance. Different influences—some extraneous and improper, others originating with themselves, and less avoidable—created delays. * * * By the commencement of the current year the entire tribe of Sacs, with about one-fifth of the Foxes, had concentrated upon the Kansas River, there awaiting the arrival of the remainder. * * *
>
> The band of Foxes which is yet behind, in passing through the country of the Pottawatomies, was induced to make a halt there. I am told that they were invited to stop by the chiefs of that people. * * * But it is presumed that the entire people will congregate here by the period for the annuity payment of the present year. (Report of the Commissioner of Indian Affairs for 1846, pp. 298, 299.)

Excepting a few sick and infirm members of the tribe, and perhaps some who, from choice or other causes, loitered on the way, as in the *case of those* referred to by Agent Beach, it must be assumed that the

whole tribe had reached and were located upon their new lands within a reasonable period after the aforesaid report of Agent Beach.

As confirmatory of this, the same agent, in a report to the Commissioner of Indian Affairs, dated September 1, 1847, says that "within the past twelve months the Sacs and Foxes have become settled upon the tract of land assigned them under the treaty of 1842." (Report of Commissioner of Indian Affairs for 1847, p. 845.)

In their memorial to Congress (Senate Mis. Doc., No. 48, Fifty-third Congress, third session, p. 1) the claimants say:

> That the tribe of Sac and Fox Indians of the Mississippi formerly resided upon land now within the State of Iowa; that by the treaty of 1842 "all the lands west of the Mississippi River to which they have any claim or title, or in which they have any interest whatever," were ceded to the United States, they receiving, as part consideration for said cession, a reservation in what is now the State of Kansas, to which they removed.
>
> The locality of the said new reservation in Kansas proving to be not so healthful, and becoming for this and other reasons dissatisfied with the change, a portion of the tribe returned to the State of Iowa prior to the year 1855.

In his report of September 1, 1845, made from the agency in Iowa, Capt. John Beach, Indian agent, says in relation to the location in Iowa:

> I will conclude by observing that we were unfortunate in the choice of our present location. I doubt if there can be a more unhealthy point within the Territory of Iowa than the site of this agency and vicinity. In common with nearly all the residents, civil and military, of the place, I, with my family, have suffered severely from diseases of a malarious origin during the past and present summer. Since September 1, 1844, seventy-nine Indians have died. (Report of the Commissioner of Indian Affairs for 1845, p. 483.)

In his report of a year later, made from the new agency in Kansas, the same officer says:

> The climate appears pleasant. We have heard no other than a very sickly character ascribed to it; but thus far, at least, notwithstanding a long duration of excessive heat, our exposed situation, and unacclimated habits, our apprehensions have proved entirely unfounded. (Report of the Commissioner of Indian Affairs for 1846, pp. 298, 299.)

The records of the Indian Office show that a part of the memorialists returned to Iowa about the year 1855 (Indian Office files, Sac and Fox, G. 5, 1863), after having remained with the tribe in Kansas for a period of about ten years.

At the date of the treaty of 1842 the tribe resided in Iowa, but by that treaty their lands in that Territory were ceded to the United States, and other lands in lieu thereof were accepted in what is now the State of Kansas. The tribe was moved to their new reservation, in conformity with the terms of the treaty, but in the winter of 1854 and 1855 a portion of the tribe, constituting the pioneers of this small band, other small parties following in each of the years from 1862 to 1866, inclusive, returned to Iowa, and thereafter purchased lands upon which they now reside and where they are known as the Sacs and Foxes of Iowa. Their abandonment of the reservation provided for them in Kansas and taking up their residence in Iowa was without the consent of the United States.

In their first claim they ask for annuities from 1853 to 1867.

The evidence presented by the memorialists and the record show that no part of this band reached Iowa on their return until about the winter of 1854 and 1855.

The record shows further that the pioneers of the band received their last annuities with the reservation Indians at the agency in Kansas in the latter part of 1854.

These were not upon the reservation after that date. They had abandoned it, and, so far as the record or evidence shows, never claimed, during the years named, any annuities that were paid out to the Sacs and Foxes upon the said reservation.

Article 7 of the treaty of October 1, 1859, provided as follows, viz:

The Sacs and Foxes of the Mississippi, parties to this agreement, are anxious that all the members of their tribe shall participate in the advantages herein provided for respecting their improvement and civilization, and to that end to induce all that are now separated to rejoin and reunite with them. It is therefore agreed that, as soon as practicable, the Commissioner of Indian Affairs shall cause the necessary proceedings to be adopted to have them notified of this agreement and its advantages, and to induce them to come in and unite with their brothers; and to enable them to do so, and to sustain themselves for a reasonable time thereafter, such assistance shall be provided for them at the expense of the tribe as may be actually necessary for that purpose: *Provided, however,* That those who do not rejoin and permanently reunite themselves with the tribe within one year from the date of the ratification of this treaty shall not be entitled to the benefit of any of its stipulations. (15 Stat. L., p. 469.)

Those who left the reservation in 1862 and later years were upon the reservation at the date of and were parties to the treaty of 1859, and were not less bound by its terms than were those who left the reservation in 1854, who were also excluded from the benefits of that treaty in failing to return to the reservation "within one year from the date of ratification of this treaty," July 9, 1860.

It is doubtless a fact also that these later migrants, as did the pioneers of this band, received their annuities and all other treaty benefits up to the dates of their departure from the reservation.

In their second claim they ask for their share of the annuities from 1867 to 1894, including the $5,000 set apart for support of a manual labor school, $5,000 set apart for support of national tribal government, and $1,500 set apart for pay of a physician and for purchase of medicines.

By act of Congress approved March 2, 1867, it was provided—

That the band of Sacs and Foxes of the Mississippi, now in Tamar (Tama) County, Iowa, shall be paid pro rata according to their numbers, of the annuities, so long as they are peaceful and have the assent of the government of Iowa to reside in that State. (14 Stat. L, p. 507.)

A treaty made between the United States and the Sac and Fox Indians, February 18, 1867, ratified October 14, 1868, for the removal of the Indians from the reservation in Kansas to a reservation in the Indian Territory, recognized the rights of the Sacs and Foxes of Iowa to share in the tribal annuities. (15 Stat. L., p. 495.)

The first payment to the Iowa branch was made early in the year 1867, the proportion of said annuities paid to them being $11,174.66, payments to them at that rate being continued up to and including the fiscal year 1884.

In 1884 Congress provided—

That hereafter the Sacs and Foxes of Iowa shall have apportioned to them, from appropriations for fulfilling the stipulations of said treaties, their per capita proportion of the amount appropriated in this act, subject to provisions of treaties with said tribes; but this shall apply only to the Sacs and Foxes now in Iowa: *And provided further,* That this shall apply only to original Sacs and Foxes now in Iowa, to be ascertained by the Secretary of the Interior. (Act of July 4, 1884, 23 Stat. L., p. 85.)

Pursuant to this requirement of Congress, a census was taken, and it was ascertained that there were at that time 317 original Sac and Fox Indians residing in Iowa. From that date, including the fiscal year 1885, these Indians have been paid upon the basis of the number stated, the payment amounting to about $15,220 annually, except in two years, when they were paid a larger sum.

In their memorial these Indians complain that from 1867 to 1894 they were not paid the per capita amount which they were entitled to receive under the act of Congress of March 2, 1867 (before named), and under the treaty of 1867.

By an act of May 17, 1882, Congress provided—

That hereafter the Sacs and Foxes of Iowa shall have apportioned to them from appropriations for fulfilling the stipulations of said treaties no greater sum thereof than that heretofore set apart for them. (22 Stat. L., p. 78.)

Thus it will be seen that from 1882 to 1885 there could not be paid to the Iowa Sacs and Foxes any greater sum annually than they had received annually prior to that time. It seems also that this act of Congress is legislative approval as to the manner in which the fund had been distributed prior to its date.

The memorialists also set up the claim that the $10,000 which the treaty of 1867 provides shall be set apart for the maintaining of a manual labor school and for the support of tribal government should not affect their shares of the annuities. That is to say, that the aggregate annuities, to-wit, $51,000, should be divided pro rata among the Sacs and Foxes of Iowa, as well as the Sacs and Foxes of Oklahoma, without any deduction on account of maintaining schools and the tribal government of the last-named branch.

An exception has been noted in the amount of the annual payments since the census taken under the act of 1884.

This exception was in the fiscal years 1885 and 1886, in each of which the sum of $19,020 was apportioned and paid to them—this sum being based upon the amount of the aggregate annuities, $51,000.

Subsequent to these payments, the Oklahoma Sacs and Foxes protested against the method of calculation adopted by the Indian Office, claiming that the $10,000 set apart by the ninth article of the treaty of 1867 for manual labor school and for support of tribal government should be deducted before a division of the annuities between the two branches.

Upon appeal to the Department this protest was sustained by Secretary Lamar, in a letter addressed to the Commissioner of Indian Affairs, on June 1, 1886, as follows, viz:

Referring to your letter of March 27, 1886, relative to the distribution of the treaty funds of the Sac and Fox tribe of Indians of the Mississippi, and to the indorsement of this Department of April 5, 1886, thereon, inclosing for your information an opinion on the subject by the Assistant Attorney-General for this Department, holding that "the Office of Indian Affairs would not be required to deduct the sum of $11,500, nor any part of said sum, from the total amount appropriated for said Indians before a calculation is made for the distribution of said money per capita among the Indians located in the State of Iowa and the Indian Territory," Moses Keokuk, chief of the Sac and Fox tribe of Indians of the Mississippi in the Indian Territory, on April 26 filed in this Department an appeal from the foregoing conclusion on the case, and urged that the sum of $5,000 for support of schools, and the further sum of $5,000 for support of their national government, required by their treaty to be set apart annually from the income of their funds for the purposes named, together with the sum of $1,500 for medicines and pay of physician required by the acts of appropriation to be used for that purpose from the income of the fund, making in all a total of $11,500, should be deducted from the total amount of their income, $51,000, before the per capita distribution is made.

I have given the matter further consideration and have looked more carefully into the provisions of the treaty with these Indians of February 18, 1868 (15 Stat. L., 495), on the subject. In the 9th article of that treaty it is provided that "in order to promote the civilization of the tribe one section of land convenient to the residence of the agent shall * * * be set apart for a manual-labor school; and there shall also be set apart, *from the money to be paid to the tribe under this treaty*, the sum of $10,000 for the erection of the necessary school buildings and dwelling for teacher, and the annual *amount of $5,000 shall be set apart from* the income of their *funds * * * for the support of the school*; and after the settlement of the tribe

upon their new reservation the sum of $5,000 of the income of their funds may be annually used, under the direction of the chiefs, in the support of their national government. * * *."

Article 21 of said treaty provides that " * * * no part of the funds arising from or due the nation under this or previous treaty stipulations shall be paid to any bands or parts of bands who do not permanently reside on the reservation set apart to them by the Government in the Indian Territory, as provided in this treaty, *except those residing in the State of Iowa;* * * *."

The Sac and Fox Indians of the Mississippi, one of the parties to this treaty, include at present the three classes, viz: (1) Those now living on the reservation. (2) Those living in Kansas. (3) Those living in the State of Iowa. The treaty was made with the tribe, and all of the several bands or classes composing the tribe are bound by its provisions. As shown above, it is provided in that treaty that the sums specified should be *set apart from the money to be paid to* the *tribe under the treaty.*

The object of both parties to the treaty was to *promote* the *civilization of the tribe,* and hence it was agreed that from the common fund should be paid the sums of money agreed on for the accomplishment of that object.

At the date of the treaty none of those Indians were on the reservati on provided for by that treaty. It was not stipulated that said sums should be set apart from the pro rata share of those who might move on the reservation, but that it should be *set apart* from the money to be paid to the *tribe* under the treaty. If, therefore, that sum of money is $51,000, and it is stipulated that from such income a specific sum should be set apart for purposes common to all who might elect to accept its benefits it is clear that the sum remaining *for pro rata* distribution would be the difference between $51,000 and the specific charge agreed to be deducted therefrom.

The twenty-first article of said treaty does not militate against this view, but confirms it. It was desired that all the tribe should participate in all the advantages to be derived from the investment of their funds, sale of lands, etc., by joining their brethren on the reservation. In aid of this it was provided that no part of the fund should be paid to any band or parts of bands who do not reside on the reservation, *except those residing in the State of Iowa.*

To what extent, then, are the Sacs and Foxes living in the State of Iowa excepted from the obligation of the treaty? Simply this: Their right to remain in Iowa is recognized, without forfeiting their right to share in the common fund. No bands or parts of bands who do not reside on the reservation shall be paid any part of said fund, except those living in the State of Iowa. This is the sole exception in their favor; but they are equally bound by the treaty stipulation, providing that from the common fund shall be deducted the amounts specified for the support of the school and the National Government. If it was not intended that the sum so provided to be set apart annually from the income of their funds should be deducted from the common fund before distribution, why not have said that there shall be apportioned among the Sacs and Foxes of the Mississippi their proportion of the amount appropriated by this act, and from the amount so apportioned and due to the Sacs and Foxes living on the reservation there shall be set apart the sum of $5,000 for the support of the school and $5,000 for the support of the Government? But if there is any question as to the construction of this treaty in reference to the proper disposition of this fund, the act of 1885 (23 Stat. L., 373) making appropriation for the Sacs and Foxes of the Mississippi removes all doubt. That act appropriates $51,000 for the said Indians, and provides that the sum of $1,500 shall be used for pay of a physician and medicine for the use of said Indians. It also provides that "hereafter the Sacs and Foxes of Iowa shall have apportioned to them, from appropriations for fulfilling the stipulations of said treaties, their per capita proportion of the amount appropriated in this act, subject to provision of treaties with said tribes; * * * that this shall apply only to the (original) Sacs and Foxes now in Iowa * * *."

What are the provisions of the treaty to which their apportionment is subject? Clearly, the specific charge of $10,000 which by the treaty was provided to be *set apart from the income of their funds.* A careful examination of the treaty fails to show that the income to be paid annually to these Indians is subject to any other provision. I think it therefore plain that the sum of $10,000 should be deducted from the $51,000 appropriated before the per capita distribution is made to the several bands.

In reference to the sum of $1,500, appropriated for the pay of a physician and medicine for said Indians, article 10 of said treaty provides that "The United States agree to pay annually, for five years, * * *" the sum of $1,500 for said purpose.

This limit of five years has long since expired, and therefore the treaty obligation of the Government to the Indians for that purpose has ceased; but as the necessity for a physician and for medicine for the Indians still exists, Congress has deemed it proper to require that these necessities shall be provided for out of the income of *the tribe.* The provision of the law of May 15, 1886, on this subject is as follows:

"*For interest on eight* hundred thousand dollars, at five per centum, per second

article of treaty of October eleventh, eighteen hundred and forty-two, forty thousand dollars: *Provided*, That the sum of one thousand five hundred dollars of this amount shall be used for the pay of a physician and for purchase of medicine; * * *."

From what "amount" is this sum to be taken? The law says from "this amount"—"forty thousand dollars." It is therefore clearly made a charge against that sum, and it should be deducted therefrom before any per capita distribution of the fund is made to the Indians of the several bands of the tribe.

You will be governed by this letter in your action regarding the several matters herein considered.

This matter was properly disposed of by Secretary Lamar. (Opinion of Assistant Attorney-General Hall, Int. Dept., Dec. 23, 1895.)

The memorialists also claim that the $1,500 which Congress has provided annually since 1875, with one or two exceptions, should be set apart for the payment of a physician and the purchase of medicine should not be deducted from the annuities before the division of the pro rata shares of the Iowa branch, but that said amount should be charged to the Oklahoma branch.

In the first act of Congress in which provision was made for this purpose the following language is used:

of which sum one thousand five hundred dollars shall be paid for a physician for the agency, who shall furnish the necessary medicines. (Act June 22, 1874, 18 Stat. L., p. 163.)

Congress in express terms directed that "of this sum," meaning the $51,000 appropriated, $1,500 should be paid for a physician for the agency, who should furnish the necessary medicines.

It is very evident that said amount was to be taken from the gross sum appropriated, and that the appropriation was for the benefit of the Sacs and Foxes on the reservation set apart for that tribe under the treaty of 1867.

In some of the subsequent acts making annual appropriations for this purpose the language of the original appropriation is changed, but there is not such a change of language as would indicate a change of intent on the part of Congress. (Opinion of Assistant Attorney-General Hall, Int. Dept., Dec. 23, 1895.)

The annual deductions since the fiscal year 1884 on account of physician and medicine have ranged from $1,260 down to $1,100, averaging about $1,150 instead of $1,500, as charged by the memorialists, and they have participated in their proportion of the difference since the date named above.

The further claim is made that the Sacs and Foxes of Oklahoma have become citizens of the United States and of the Territory of Oklahoma; that the tribal organization can no longer exist, and that they should not have reserved for them the $5,000 for the support of a tribal government.

Notwithstanding these Indians are citizens of the Territory of Oklahoma and of the United States, yet they have been treated by Congress as a tribe for the purpose of carrying out the treaty stipulations with them. This Congress may do. (3 Wallace, p. 419; Opinion of Assistant Attorney-General Hall, Int. Dept., Dec. 23, 1895.)

Their third claim is for their shares of $147,393.32, appropriated by Congress to pay for land ceded by the treaty of 1867; $50,302.84 is claimed on this account, with interest thereon at 5 per cent from 1873, amounting to $57,848.27.

By the third article of the treaty of February 18, 1867 (15 Stat. L., p. 495), the United States agreed to pay the Sacs and Foxes, at the rate of $1 an acre for about 157,000 acres of land ceded by the first and second articles of that treaty, these lands being the unsold por-

tion of their diminished reserve in Kansas, defined in the first article of their treaty of October 1, 1859, and of the unsold portion of their old reservation, provided by article 4 of the same treaty.

The lands thus ceded were subsequently ascertained to have an area of 147,393.32 acres, and Congress, by an act approved April 10, 1869 (16 Stat. L., p. 35), appropriated $147,393.32, being the sum necessary to pay therefor at the rate of $1 per acre.

After the payment of certain indebtedness of the tribe, provided for in the third article of the treaty of 1867, the balance remaining of the above-named fund was invested in 1873, under the provisions of the same article, in United States 5 and 6 per cent bonds, which, on maturity, were converted into United States 4 and 5 per cent bonds. These last-named bonds were subsequently disposed of, and the proceeds thereof, amounting to $55,058.21, deposited in the Treasury to the credit of the tribe, under the provisions of the act approved April 1, 1880, (21 Stat. L., p. 70), and interest at the rate of 5 per cent per annum is paid thereon.

Interest amounting to $61,129.62 has been collected on the aforesaid bonds and on the invested fund, an average of about 5 per cent per annum, and $1,305.46 premium was realized from the sale of coin interest and $3,839.50 premium from the sale of the 4 and 5 per cent bonds referred to, the whole received thereon aggregating $66,274.58 (Senate Mis. Doc. No. 48, Fifty-third Congress, third session, pp. 21–25), from the date of the original investment to July 1, 1895.

Of the aforesaid interest income, $11,523.18 has been placed in the hands of the agent for the Iowa Sacs and Foxes since 1886 for payment to them, and the same has been so paid, excepting the shares of six individuals, which have been returned to the Treasury and now remain to their credit on the books of that Department.

The twenty-first article of the treaty (1867) provides:

> The Sacs and Foxes of the Mississippi, parties to this agreement, being anxious that all the members of their tribe shall participate in the advantages to be derived from the investment of their national funds, sales of lands, and so forth, it is therefore agreed that * * * no part of the funds arising from or due the nation under this or previous treaty stipulations shall be paid to any bands or parts of bands who do not permanently reside on the reservation set apart to them by the Government in the Indian Territory, as provided in this treaty, except those residing in the State of Iowa; * * *.

Under this article of the treaty the Iowa Sacs and Foxes are entitled to their just proportionate shares of the residue of the aforesaid fund appropriated to pay for the lands ceded by the first and second articles of the treaty.

The said third article of the treaty also made provision for the payment of—

> the outstanding indebtedness of the said tribe, now represented by scrip issued under the provisions of previous treaties, and amounting, on the first of November, eighteen hundred and sixty-five, to twenty-six thousand five hundred and seventy-four dollars, besides the interest thereon, out of the proceeds of the sale of lands ceded in this treaty, and the amount herein provided to be paid to said Indians, after deducting such sums as under the provisions of this treaty are to be expended for their removal, subsistence, and establishing them in their new country, shall be added to their invested funds, and five per cent interest paid thereon, in the same manner as the interest of their present funds is now paid.

This provision of the treaty required the payment of certain indebtedness represented by scrip issued under the provisions of former treaties. The Iowa Sacs and Foxes were parties to former treaties, and as a part of this migratory band remained on the reservation with the tribe as late as the year 1866—small parties of them separating from

the main body in each of the years from 1862 to 1866, inclusive—and there being no record or evidence by which this indebtedness can be accurately apportioned among individuals or the several sections of the tribe, it is held that this branch is liable for its pro rata share thereof; but it is also held that they are not liable for any of the expenses of the removal of the tribe to and locating them on the new reservation in the Indian Territory, none of them having been so removed.

An examination of the records of the Indian Office and the Treasury Department shows that $38,034.49 (Report of the Commissioner of Indian Affairs for 1871, p. 680) was paid on account of the aforesaid outstanding indebtedness out of the said sum of $147,393.32 received for lands ceded under the treaty of 1867, leaving a balance of $109,358.83, subject to distribution between the two branches of the tribe.

At the time of the appropriation of the aforesaid $147,393.32 the Sacs and Foxes of Iowa numbered about 265 souls, and those in Oklahoma and Kansas about 728, the two branches aggregating 993 persons.

Therefore the Iowa branch is entitled to $\frac{265}{993}$ of the $109,358.83 residue of the fund received in payment for lands sold under the first and second articles of the treaty of 1867, amounting to $29,184.38, and interest thereon from July 1, 1873, to January 1, 1896, at the rate of 5 per cent per annum, being $1,459.22 per year for twenty-two and one-half years, equal to $32,832.45.

The memorialists also make the following statements in the aforesaid Senate document, viz:

(1) In 1869, the year the appropriation was made for the lands ceded by the treaty of 1867, the numbers of the two divisions of the tribe were as follows: Those removed to Oklahoma, 728; those in Iowa, 265. On the basis of these numbers those in Iowa are entitled to $\frac{265}{993}$ of said appropriation, $147,393.32, which amounts to the sum of $39,334.57. But instead of receiving this sum they got no portion of said appropriation made in payment for the cession of the tribal lands in the State of Kansas.

This is disposed of in the finding on claim No. 3.

It will be observed that in their claim No. 3, which is for the same objects as the above, they claim $50,302.84, principal, instead of $39,334.57, as above, and interest amounting to $57,848.27.

(2) They also claim that instead of the balance of $55,058.21 of the appropriation of $147,393.32, made for the payment for the land ceded by the treaty of 1867, being placed in the Treasury to the credit of the tribe, they, the Iowa branch, should have received, in proportion to their numbers, as much of said payment as was devoted to the exclusive use and benefit of the Oklahoma branch, and that the remainder should have been placed in the Treasury or invested for the tribe, all the members of the tribe sharing in the income therefrom.

This is also disposed of by the finding in claim No. 3.

(3) By the treaty of 1842 a reservation for the tribe was given as part consideration for the cession of tribal lands in the State of Iowa. Another item of consideration for that cession was the payment by the United States of debts of the tribe to the amount of $258,566.34. (Art. 2, 7 Stat. L., 596.)

The Kansas reservation was diminished by the treaty of 1859 (14 Stat. L., 469), and the proceeds were used exclusively for the benefit of those members of the tribe residing then in Kansas. The treaty provided that said proceeds should be expended in building houses, furnishing agricultural implements, stock animals, and other necessary aid for commencing agricultural pursuits upon the allotments of land to be taken on the diminished reservation. The said treaty also provided that the debts of the tribe and of the individuals thereof should be paid from said proceeds. It was stipulated that such debts should be first liquidated and their justness ascertained by an "examination *thereof, to be made* by their agent and the superintendent

of Indian affairs for the central superintendency, subject to revision and correction by the Secretary of the Interior."

* * * * * * *

The annual report of the Commissioner of Indian Affairs for 1852, commencing at page 549, contains a brief statement of the proceedings taken under the treaty of 1859, for the ascertainment of the indebtedness, expenditure of the funds, etc., from which the following is condensed, * * * making a total of $271,822.49.

This amount constituted an indebtedness for which there were no funds on hand properly chargeable with its payment, the ceded lands not yet having been sold. To provide for this indebtedness certificates of indebtedness were issued for the whole sum. These certificates bore interest.

Sales of a portion of the lands were subsequently made under said treaty, viz, 268,502.68 acres for $282,439.27. * * *

The amount of the principal of the interest-bearing certificates outstanding at the date (November 1, 1865) of the statement from which the foregoing figures are taken was $26,574.59.

Thus the matter stood up to the date of the treaty of 1867, and these facts and figures show that those members of the tribe residing on the reservation in Kansas had not only received all the benefits arising from the sale of a large portion of the tribal lands and allotments of land on the diminished reservation, but were still in debt to the amount of $26,574.59, with interest accumulated and accumulating thereon.

The seventh article of the treaty of 1859, which contained a provision regarding absent members of the tribe, provided—

That those who do not rejoin and permanently reunite themselves with the tribe within one year from the date of the ratification of this treaty shall not be entitled to the benefit of any of its stipulations.

It has been shown that a part of the Iowa Sacs and Foxes separated themselves from the tribe on the reservation in 1854 or 1855, and that others of them left the reservation in each of the years from 1862 to 1866, inclusive, none of them, so far as can be discovered, ever returning, as required by the aforesaid article 7 of the treaty of 1859.

It was not the policy or the custom of the Government during these years to countenance or permit absenteeism from reservations, or to pay annuities to Indians except at their agencies on their reservations.

Those who left the reservation prior to the date of the treaty and failed to return forfeited any rights they might have acquired under the provisions of article 7 had they returned.

As to those who left subsequent to the date of the treaty, there is nothing of record, nor is there any evidence to show that these were not of that class of "individual members" whose debts, "due and owing at the date of the signing and execution hereof," it was agreed by the fifth article of the treaty "shall be liquidated and paid out of the fund arising from the sale of their surplus lands." By their continued absence, without the consent of the Government, these also forfeited any rights that may have been attached to them as members of the tribe.

There is nothing found due under the provisions of the treaty of 1859.

(4) The interest on the unexpended $55,058.21 of the ceded land appropriation has been 5 per cent upon the greater portion, with premium on the gold, and 6 per cent on the remainder, while the same was invested in United States bonds, and 5 per cent since it was placed in the Treasury.

The investment of the unexpended balance above referred to was made in 1873 in $54,200 United States 10-40 5 per cent bonds, and $905.41 United States loan of 1865, 6 per cent bonds, at an aggregate cost of $61,855.73. The $905.41 United States 6 percents were redeemed in 1878, and the proceeds, $905.41, invested in $858.21 United States funded loan (1881) 5 per cent bonds, and the $54,200 United States ten-forties were redeemed in 1879 at par, the proceeds being invested in $54,200 United States consols of 1907, 4 percents, thus making the cost

of the $55,058.21 in stocks $61,855.73, and showing $6,797.52 as the cost of the several investments.

The bonds were disposed of in 1881, realizing a premium of $3,839.50 on the sale, and the principal, $55,058.21, was placed in the Treasury to the credit of the tribe, at 5 per cent interest, under the provisions of the act of April 1, 1880.

For several years after the original investment in 1873 gold was at a premium, and the interest being payable in that coin, the same was converted into currency as collected and the premium as well as the interest passed to the credit of the tribe. The amount of premium thus realized was $1,305.46. This, with the premium realized on the sale of the 4 and 5 per cent bonds, $3,839.50, as stated, makes an aggregate of $5,144.96 profits from this source. Deducting this sum from the $6,797.52 shown as the cost of the several investments, leaves $1,652.56 as the net cost of these transactions.

Interest to the amount of $61,129.62 has been collected on the aforesaid investments up to July 1, 1895, being a fraction over 5 per cent for the whole time, the excess over that rate for the entire period being $365.54. Taking this amount from the net cost of the investments, as shown above, leaves the net income $1,187.02 less than would have accrued in the same period on the investment of an equal sum at 5 per cent.

This also has been disposed of by the finding in claim No. 3.

It is believed that the foregoing covers all the matters presented by the memorialists.

FINDING.

First claim.—Nothing is found due on this claim for annuities from 1853 to 1867, it being held that the same were forfeited in consequence of the Indians abandoning their reservation in defiance of treaty obligations and without the consent of the United States Government.

Second claim.—Nothing is found due on this claim for annuities charged to have been unjustly apportioned from 1867 to 1894. It is held that the same had been properly and justly apportioned and paid in accordance with the provisions of the several treaties and acts of Congress.

Third claim.—On this claim for their proportionate shares of $147,393.32, appropriated by the act of April 10, 1869, in payment for lands ceded by the first and second articles of the treaty of February 18, 1867, there is found due them the sum of $29,184.38 on account of principal, and $32,832.45 interest thereon, at the rate of 5 per cent per annum from July 1, 1873, to December 31, 1895, inclusive, aggregating $62,016.83.

The reasons for this finding will be found in the statement of the "third claim," beginning on page 9 of this account.

As has been shown, $11,523.18 has been paid to the memorialists from the interest account of the tribal invested fund since 1886. The finding of their "third claim" makes an allowance for interest on the amount of the principal due for the whole time of the investment, from 1873. The above sum is therefore to be deducted from the amount found due them on the "third claim."

It has also been shown that $19,020 were paid them in each of the fiscal years 1885 and 1886 on account of their share of the tribal annuities. This was $7,600.40 in excess of their proper proportion under the decision of the Secretary of the Interior of June 1, 1886. This sum is also to be *deducted from the finding* on the "third claim."

The account, therefore, will stand thus:

Amount of principal found due on "third claim"		$29,184.38
Amount of interest found due on same claim		32,832.45
Making a total of		62,016.83
Deduct as follows:		
On account of interest paid	$11,523.18	
On account of overpayments of annuities, fiscal years 1885 and 1886	7,600.40	
		19,123.58
Leaving a balance due of		42,893.25

WASHINGTON, D. C., *February 6, 1896.*

SIR: We beg to acknowledge receipt of your letter of the 30th of January, 1896, inclosing to us, as attorneys for that branch of the Sac and Fox Indians of the Mississippi residing in the State of Iowa, "a copy of an account prepared in the Department, in conformity with the provisions of the act of March 2, 1895, of their claims for their shares of the tribal annuities under the several treaties with the tribes."

We are also informed in the same letter that—

> Notice of this accounting has been given to the Oklahoma branch of the tribe, and they have been requested to file their objections thereto, if any, within a reasonable time.

We have examined and considered the said "statement of account," and we respectfully submit, on behalf of our clients, that error has been committed therein as follows:

The account sets forth:

> *First claim.*—Nothing is found due on this claim for annuities from 1853 to 1867, it being held that the same were forfeited in consequence of the Indians abandoning their reservation in defiance of treaty obligations and without the consent of the United States Government.

The statement of facts alleged and provisions of treaties upon which this adverse conclusion is stated may be briefly summarized as follows: That all of the tribe did remove to Kansas under treaty provisions; that after remaining in Kansas for about ten years, the pioneers of those who returned to Iowa reached that State in the winter of 1854–55, after having received their share of the annuities paid to the tribe in the latter part of 1854; that they were not upon the reservation in Kansas after that date, "and, so far as the record or evidence shows, never claimed during the years named any annuities that were paid out to the Sacs and Foxes upon the said reservation." (See pp. 6 and 7 of the "Statement of account.")

Article 7 of the treaty of 1859 is also quoted (ibid., p. 7) as showing that those of the tribe who returned to Iowa forfeited their annuities by abandoning the reservation "in defiance of treaty obligations."

It is true that those of the tribe who returned to the State of Iowa, whether they returned in 1853 or in 1854, did not go back to the agency in Kansas to claim their annuities; but it is not true in any sense that they made no claim to and for their annuities. The record shows to the contrary. On page 1 of their memorial to Congress (Senate Mis. Doc. No. 48) is set out an act of the legislature of the State of Iowa, showing that the Sacs and Foxes who had returned had made known to the State legislature their return, their condition, situation, their reasons for returning to their old home, their desire and request to be permitted *to remain in said State,* and also their complaints against nonpayment

of their annuities, and their request to the General Government for payment thereof through the State legislative act set forth.

It will be seen that the said act of the legislature of the State of Iowa was approved July 15, 1856; that it grants the petitioners permission to reside in said State; and, further, it contains this:

And that the governor be requested to inform the Secretary of War thereof, and urge on said Department the propriety of paying said Indians their proportion of the annuities due or to become due to said tribe of Sac and Fox Indians.

The governor of the State of Iowa was ex officio superintendent of Indian affairs over those Indians when they removed from the State; they, with their limited knowledge of affairs of civilized government, naturally supposed that he was the proper official to whom they should petition; all the tribal lands in that State had been ceded by the tribe; they received the sanction of the State and by implication that of the United States to remain in the State and the failure then on the part of the Indian Department to object to the proposed settlement of these Indians in Iowa was an approval thereof by implication.

Clearly the Indians had no thought of forfeiting their annuities nor of abandoning any of their rights thereto under their treaties, but on the other hand they made, through the highest authority of the State of their adopted residence a formal and respectful request for the payment of their "annuities due or to become due." The legislative act was full notice to the General Government.

The adverse conclusion formulated in the "Statement of account" on this item of the claims of the memorialists appears to be based upon an opinion prepared by the Assistant Attorney-General for the Department of the Interior, dated December 23, 1895, which is yet pending before the Secretary of the Interior, wherein it is stated:

I have been informed, upon inquiry at the Indian division, that during said years it was the policy and the practice of the Government to pay no annuities to Indians who absented themselves from reservations without authority during the time of their absences, unless there was some provision of statute, or treaty, or agreement with the tribe of Indians that would authorize or require payment to such absent Indians. In this case I have been unable to find any requirement for the payment to the Sac and Fox Indians of Iowa from 1855 up to and including 1866.

In the same opinion it is claimed that the policy of nonpayment of annuities to Indians who have absented themselves from the reservation without authority is indorsed by the terms of the treaty (article 7) of 1859 with the Sacs and Foxes of the Mississippi.

Both these propositions are erroneous, and they may be considered together.

The provisions of article 7 of the treaty of 1859 should not be extended beyond the limits to which they are specifically confined by the terms thereof. The whole article is set out on page 7 of the "Statement of account." It sets forth the advantages of the treaty of which it forms a part; states that a portion of the tribe was then absent from the reservation; that it was desired that the absent portion of the tribe be invited to return to and remain with the tribe, and closes with this clause:

Provided, however, That those who do not rejoin and permanently reunite themselves with the tribe within one year from the date of the ratification of this treaty shall not be entitled to any of the benefits of its stipulations.

No annuities for the tribe were created by that treaty. No claim is based upon that treaty, near or remote, and it has no bearing upon the annuities of the tribe. It relates to land only. All that is said in their memorial by claimants as to the money accruing to the tribe under the

treaty of 1859 is so much of the history of the treaty as to bring the financial transactions up to the treaty of 1867, and to show that when the latter treaty was made there remained of the tribal indebtedness created under the treaty of 1859 an unpaid balance of $26,574.59 (see Senate Mis. Doc. No. 48, Fifty-third Congress, third session, pp. 6 and 7), of which the Iowa Sac and Fox Indians claim nothing.

It is shown in the "Statement of account" that the annuities of the tribe arise under treaties of 1804, 1837, and 1842 (see p. 3), in which there are no such provisions as those of article 7 in the treaty of 1859. It has been shown that the forfeiture stipulated for in article 7 of the treaty of 1859 is strictly confined to the benefits of its stipulations; that is, the benefits of the treaty of 1859, and of that alone.

It will be seen by article 21 of the treaty of 1867 that by that treaty a broader forfeiture of treaty benefits was proposed for the absent members of the tribe. It is in these words:

No part of the funds arising from or due the nation under this or previous treaty stipulations shall be paid to any bands or parts of bands who do not permanently reside on the reservation set apart to them by the Government in Indian Territory, as provided in this treaty, except those residing in the State of Iowa. (15 Stat., L., 504.)

The Sacs and Foxes then in Iowa are thus expressly excepted from the forfeiture of any benefits under that treaty or under previous treaties. It is contended that not only by the ratification of the treaty of 1859 the United States did not intend to sanction any treaty provision that would operate a forfeiture of any benefits accruing to the Indians in Iowa, other than the benefits accruing under that treaty, but that no existing rights were forfeited, and the words of the treaty of 1859 strictly confine forfeitures to the benefits accruing under that treaty. To that extent only was punatory legislation carried by Congress.

Laws regulating the payment of annuities to Indians are as follows:

The act of June 30, 1834, entitled "An act to provide for the organization of the Department of Indian Affairs," provides:

SEC. 11. *And be it further enacted*, That the payment of all annuities or other sums stipulated by treaties to be made to any Indian tribe shall be made to the chiefs of such tribe, or to such person as said tribe shall appoint; or if any tribe shall appropriate their annuities to the purpose of education, or to any other specific use, then to such person or persons as such tribe shall designate. (4 Stat. L., 737.)

The foregoing remained the law and regulation on the subject until the act of March 3, 1847, which provides:

SEC. 3. *And be it further enacted*, That the eleventh section of the "Act to provide for the better organization of the Department of Indian Affairs," approved June thirtieth, eighteen hundred and thirty-four, be, and the same is hereby, so amended as to provide that all annuities or other moneys, and all goods, stipulated by treaty to be paid or furnished to any Indian tribe, shall, at the discretion of the President or the Secretary of War, instead of being paid over to the chiefs, or to such persons as they shall designate, be divided and paid over to the heads of families and other individuals entitled to participate therein, or, with the consent of the tribe, be applied to such purposes as will best promote the happiness and prosperity of the members thereof, under such regulations as shall be prescribed by the Secretary of War, not inconsistent with existing treaty stipulations. (9 Stat. L., 203.)

The next provision of law on the subject is found in the act of August 30, 1852, wherein the following is contained:

SEC. 3. *And be it further enacted*, That no part of the appropriations herein made, or that may be hereafter made, for the benefit of any Indian or tribe, or part of a tribe of Indians, shall be paid to any attorney or agent of such Indian, or tribe, or *part of a tribe;* but shall in every case be paid directly to the Indian or Indians *themselves to whom it shall* be due, or to the tribe or part of a tribe per capita,

unless the imperious interest of the Indian or Indians, or some treaty stipulation, shall require the payment to be made otherwise, under the direction of the President.

Neither statutory inhibition nor treaty stipulation existed against the payment of annuities to these Indians. This was the law for the period from 1852 to 1876, and covers the period involved.

The next provision of law on the subject is found in the act of August 15, 1876, as follows:

SEC. 2. That no supplies or annuity goods, for which appropriation is made in this act, shall be issued to any band or tribe of Indians while the same may be engaged in hostilities against the United States or in depredations upon settlers; nor shall any sum of money appropriated by this act for any tribe of Indians for whom a reservation or territory shall have been made be paid to them or expended for their benefit unless such tribe and the warriors thereof shall remain peaceably within the territory assigned to them, unless absent by the consent of the agent. (19 Stat. L., 199.)

More than nine years prior to the enactment of the last quoted provision of law the Sacs and Foxes of the Mississippi in Iowa had received the sanction of Congress to remain in that State (see act or March 2, 1867, 14 Stat. L., 507; p. 2, Mis. Doc. 48, Fifty-third Congress, third session), and they had received the sanction of the State to reside there twenty years before, with notice to the United States.

The regulations of the Indian Department governing the payment of annuities to tribes are, as a rule, based upon the laws of Congress on the subject. No regulation has come under our notice in the examination of this matter that is in conflict with the law of August 30, 1852, and it is presumed that there are no such regulations in existence and that none so existed from 1853 to 1867.

The existing regulation of the Indian Office for the payment of annuities is as follows:

154. Annuity funds, except where otherwise clearly indicated by treaty stipulations, must be divided and paid to the individual members of the tribe entitled to participate therein in equal shares per capita, heads of families receipting for the amount due them, their wives, and the minor members of their families. * * * See Reg. Ind. Office, 1894.)

The foregoing is incorporated in the regulations of the Indian Office, approved by the present Secretary of the Interior, and they were the regulations governing the subject prior thereto, as will be found by reference to the regulations approved and adopted in 1884, and also those approved and adopted in 1880. We have no copies of the regulations prior to those dates available, but as that regulation is so clearly in accordance with the law of August 30, 1852, it is not probable that any regulations adopted and approved after its enactment were made inconsistent therewith.

A precedent for the adjustment of the tribal funds as claimed by the Sac and Fox Indians of the Mississippi residing in the State of Iowa will be found in the case of the Winnebago Indians.

By the treaty of 1859 the Winnebago tribe of Indians, then living in the States of Wisconsin and Minnesota, ceded a portion of their lands to the United States. The ceded lands were to be sold and the proceeds devoted to establishing the tribe on the diminished reservation and to paying the debts of the tribe.

That treaty contains as its Article V the exact words of Article VII of the treaty of the same year with the Sacs and Foxes of the Mississippi (mutatis mutandis), and which is as follows:

The Winnebagoes, parties to this agreement, are anxious that all the members of their tribe shall participate in the *advantages* herein provided for respecting their permanent settl*ement and their improvement* and civilization, and to that end to

induce all that are now separated from to rejoin and unite with them. It is therefore agreed that as soon as practicable the Commissioner of Indian Affairs shall cause the necessary proceedings to be adopted to have them notified of this agreement and its advantages, and to induce them to come in and unite with their brethren; and to enable them to do so and so sustain themselves for a reasonable time thereafter, such assistance shall be provided for them, at the expense of the tribe, as may be actually necessary for those purposes: *Provided, however,* That those who do not rejoin and permanently reunite themselves with the tribe within one year from the date of the ratification of this agreement shall not be entitled to the benefit of any of its stipulations. (12 Stat. L., 1103).

A large number of the tribe, less than a majority, did not comply with the treaty by going to and living upon the diminished reservation. They petitioned for their proportion of tribal annuities and land funds, which was denied to them by the Indian Office for the reason that they had ceased to live with the tribe. This action of the Indian Office was approved by the Secretary of the Interior. For the correspondence see Annual Report of the Commissioner of Indian Affairs for 1863, page 339.

The claim of said Winnebagoes was brought to the attention of Congress, and that body, in the provision of the Indian appropriation act of June 25, 1864, appropriating the interest and other funds for the Winnebago tribe, enacted the following:

Provided, That the proportion of annuities to which the said stray bands of Pottawatomies and Winnebagoes would be entitled if they were settled upon their reservations with their respective tribes shall be retained in the Treasury to their credit, from year to year, to be paid to them when they shall unite with their said tribes, or to be used by the Secretary of the Interior in defraying the expenses of their removal, or in settling and subsisting them on any other reservation which may hereafter be provided for them (see 13 Stat. L., 172).

This equitable and righteous law was not fully complied with by the administrative branch of the Government. The Winnebago tribe ceded the remainder of their lands in Minnesota and were removed to a reservation in the then Territory of Nebraska. This was done under the act of February 21, 1863. Those of the tribe in Wisconsin had not rejoined the tribe, and did not accompany them to the new reservation in Nebraska. More than the proportionate share of the tribal funds was paid to and expended for those removed to Nebraska. The Wisconsin Winnebagoes again complained of the unjust distribution of the tribal annuities and funds, and Congress, by the act of January 18, 1881, directed that the annuities and appropriations under treaties be dispersed by the Secretary of the Interior pro rata; and further provided that a census be taken of both branches of the tribe and an account stated between them on the basis of said census of all the funds of the tribe from 1864 to the date of the act, January 18, 1881; and then provided that—

The balance found in favor of the Winnebagoes of Wisconsin, whatever the amount may be, shall hereafter be held and considered as a debt due to them from that portion of the tribe residing in Nebraska; and until said debt shall have been extinguished the Secretary of the Interior shall cause to be deducted annually from the proportion of the annuity moneys due to the Winnebago Indians in Nebraska, to be paid to the Winnebago Indians in Wisconsin, such proportion of the share of the annuities belonging to the said Winnebagoes of Nebraska as he may deem right and proper: *Provided, however,* That such sum shall not be less than seven thousand dollars per annum. (See act of January 18, 1881; 21 Stat. L., pp. 316, 317, especially section 4.)

This case of the Winnebagoes so closely resembles that of the Sacs and Foxes residing in Iowa that it is not necessary to follow up the history of the Pottawatomies, mentioned with them in the act of June *25, 1864. (13 Stat. L., 172.)*

It is true that the Indian Office has at times made regulations seeking to deprive of their annuities Indians who leave their reservations and become citizens of the United States, unless otherwise provided by treaty or act of Congress. (See par. 161, Reg. of 1884, and par. 90, Reg. of 1880.) Congress was not long in correcting this injustice, as will be seen by the sixth section of the act of February 8, 1887, known as the "General allotment act" (24 Stat. L., 390). Indeed, the regulation was contrary to the express terms of the fifteenth section of the act of 1875, wherein it is provided, as to an Indian becoming a citizen, that he—

shall be entitled to his distributive share of all annuities, tribal funds, lands, and other property, the same as though he had maintained his tribal relations. (8 Stat. L., 420.)

There are perhaps instances where the Indian Office has refused payment of annuities to Indians absent from their reservation, but in such cases there was some express treaty or legislative enactment applicable to the specific tribe warranting it, or the absent Indian was supposed to be dead. Such may have been done in other instances, but there is no law warranting such action. There may be some excuse for such action for punitory purposes or when the whereabouts of an absent Indian is not known to the Indian Office. But there is no excuse for violating law and treaty provisions in depriving any Indians of their annuities whose whereabouts are known.

In view of the clause of the act of 1867, hereinafter set out in full, providing that these Indians "shall be paid pro rata according to their numbers, of their annuities, so long as they are peaceful and have the assent of the government of Iowa to reside in that State," and as the State gave its assent in 1856, whereof the United States had notice, it is contended that the payment of annuities provided for should apply to the then past as well as to the date of the act. A large balance was found due the Wisconsin Winnebagoes under the law of 1881, and it was recouped from the portion of the tribal funds subsequently accruing to the Nebraska Winnebagoes, and was paid to and for the identical Wisconsin Winnebagoes entitled thereto, and this is precedent for action respecting the present claimants.

The Sac and Fox Indians in the State of Iowa are seeking from Congress redress for the same kind of wrongs that were suffered by the Winnebagoes of Winconsin. The oldest and most intelligent of the band now residing in Iowa testify that the following numbers returned to that State: 144 in 1855, 77 in 1862, 42 in 1863, 13 in 1864, 12 in 1865, and 22 in 1866; making a "total, 310, which was the muster in 1867."

The first enrollment made of them by the United States after their return to Iowa was in 1867 or the year before, when only 265 were found and enrolled. It is presumed that the records of the Department contain information as to the enrollment of these Indians by the proper authorities of the State of Iowa, as was required by the act of the legislature of that State approved July 15, 1856, and that from the records and the evidence presented in the case a fair and reasonable average of the numbers of those residing in the State of Iowa from 1854–55 to 1866 may be ascertained, such an average as will do justice to those in Iowa, while doing no injustice to those now in Oklahoma, and that on such average of their numbers for those years a "Statement of the account" of what is due and payable to the memorialists on account of annuities withheld from them during those years can be made.

The testimony of the Indians as to the numbers returning to Iowa at different times has been filed since the presentation of their memorial

to Congress. If we take those figures as a basis for the average, instead of the enrollment made in 1867, not taking any account of births or deaths, the average from 1855 to 1866 is found to be 205½. For the same period the average of those now in Oklahoma is found, from the official statement of payments as reported by the Treasury (Mis. Doc. No. 48, pp. 17–19), to be 1,169.5. This would give the proper proportionate shares of the annuities as $\frac{205\frac{1}{2}}{1375}$ for those in Iowa, and $\frac{1169\frac{1}{2}}{1375}$ for those now in Oklahoma for the period from 1855 to 1866 inclusive. For this treaty period there was no charge upon the fund for school and national government; therefore the proportionate share to which claimants are entitled on this head on the basis of population named is $91,466.18.

The "Statement of account" sets forth as to the second claim the following:

Second claim.—Nothing is found due on this claim for annuities charged to have been unjustly appropriated from 1867 to 1894. It is held that the same has been properly and justly apportioned and paid in accordance with the provisions of the several treaties and acts of Congress.

The memorialists do not agree with the construction of the several provisions of the treaty and acts of Congress applicable to this portion of their claim. We do not deem it necessary to consume further time and space in setting forth their contention for their proportionate share of the two sums of $5,000 each, annually devoted to the support of schools and the support of the national government of that portion of the tribe in Oklahoma, and taken for those purposes from the total amount of the annuities, before any pro rata distribution is made between the two portions of the tribe.

But as to the amount annually taken from the total sum of the annuities, before apportionment, and used wholly for the pay of a physician and for medicines for that portion of the tribe in Oklahoma, without any warrant in the treaty therefor, we feel that the finding is so manifestly unjust, and based upon such a strained construction of the provisions of the acts of Congress, that we are constrained to appeal to the Secretary of the Interior to give to it his most careful consideration.

The treaty of 1868 provided that the United States should for five years furnish a physician and medicines for the tribe. (15 Stat. L., 495, art. 10.) This provision soon expired. The need for the physician and medicines continued to exist. Congress provided therefor in the clause of the appropriation acts making appropriations for the annuities, aggregating $51,000, in such language as the following—

of which sum, one thousand five hundred dollars shall be paid for a physician for the agency, who shall furnish the necessary medicines. (Act of June 22, 1874, 18 Stat. L., 163.)

In the act of August 15, 1876, the language was changed, and has thereafter continued as follows:

Provided, That the sum of one thousand five hundred dollars of this amount shall be used for the pay of a physician and for purchase of medicines. (19 Stat. L., 189.)

In the opinion upon which the statement of this item of account is based it is stated:

It is very evident that said amount was to be taken from the gross sum appropriated, and that the appropriation was for the benefit of the Sac and Fox on the reservation set apart for the tribe under the treaty of 1868.

Let us look further into this. On the subject of the payment of the *annuities to the Sac* and Fox Indians in Iowa, who from 1854 to 1866

had received not a penny of the tribal annuities, Congress enacted in 1867 the following:

That the band of Sacs and Foxes of the Mississippi, now in Tamar (Tama) County, Iowa, shall be paid pro rata according to their numbers, of the annuities, so long as they are peaceful and have the assent of the government of Iowa to reside in that State. (14 Stat. L., 507.)

By the act of 1882 the following is provided:

That hereafter the Sacs and Foxes of Iowa shall have apportioned to them from appropriations for fulfilling the stipulations of said treaties no greater sum thereof than that heretofore set apart for them. (22 Stat. L., 78.)

This latter act was so manifestly unjust, perpetuating a wrong against which the Sacs and Foxes of Iowa were then protesting, that Congress, by the law of 1884, provided—

That hereafter the Sacs and Foxes of Iowa shall have apportioned to them, from appropriations for fulfilling the stipulations of said treaties, their per capita proportion of the amount appropriated in this act, *subject to provisions of treaties with said tribes.*

The apportionment named is not subject to Congressional enactment, but to "provisions of treaties." There is no existing treaty provision for the support of a physician or for the purchase of medicines.

It surely will not be contended that Congress intended that the clause of the law providing for a physician and for medicines, at the cost of not exceeding $1,500, shall have greater force and more controlling effect than the special provisions of law prescribing the manner for the distribution of a large sum of money between two interested and contending portions of a tribe.

It seems hardly necessary to narrow down this item of the claim to the period since the act of 1884, which provides that the apportionment shall be "per capita," "subject to provisions of treaties." It is not consistent with existing treaty provisions that the amount set apart annually by acts of Congress for physician and medicines shall be taken from the $51,000 before any apportionment is made.

The memorialists accept the finding as to the third claim, stated in the "Statement of account" as follows:

Third claim.—On this claim for their proportionate shares of $147,393.32, appropriated by the act of april 10, 1869, in payment for lands ceded by the first and second articles of the treaty of February 18, 1867, there is found due them the sum of $29,184.38 on account of principal, and $32,832.45 interest thereon, at the rate of 5 per cent per annum from July 1, 1873, to December 31, 1895, inclusive, aggregating $62,016.83.

The interest on the principal should be calculated to July 1, 1896, or to the date of payment.

It is, however, observed that in the final statement of this third claim in the "Statement of account" a deduction of $7,600.40 is made from the allowance stated on the third claim, being, as alleged, excess of their proper share of tribal annuities under the decision of the Secretary of the Interior of June 1, 1886. We protest against any such deduction. We contend that the claimants did not receive their pro rata share of the annuities between the years from 1867 to 1894, or to date, inclusive. If, as it is held, "this matter was properly disposed of by Secretary Lamar," and that it consequently can not be reopened for a readjustment for the benefit of the Sac and Fox Indians of Iowa, it should not be disturbed for the benefit of the Sac and Fox Indians of Oklahoma. If it is a settled account as to *one*, it should be and remain a settled account as to *all*. If it should be reopened for a fair, equitable, and just adjustment of *the item annually* expended for physician and

medicine alone for the Oklahoma Sacs and Foxes, a large balance would be found in favor of the Sacs and Foxes of Iowa.

Wherefore, protesting against so much of the findings of said "Statement of account" as are erroneous and fail of justice to the Sac and Fox Indians of the Mississippi now residing in the State of Iowa, it is respectfully urged that prompt action be taken by the Secretary of the Interior in the further consideration of said account, so as to pay to the claimants, through the present session of Congress, all that is now possible of their just demands, and that so much of claimants' demands as can not be fully and finally determined in time for disposition by the present session of Congress be continued for further investigation.

J. M. VALE,
R. V. BELT,
Of Counsel for the Sac and Fox Indians of the Mississippi.

Hon. HOKE SMITH,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, March 12, 1896.

SIR: I am in receipt of your communication of the 6th ultimo, as attorney for the Iowa branch of the Sac and Fox of the Mississippi Indians, objecting to and contesting certain of the findings in a "Statement of account" between the above-named tribe and the branch thereof referred to, prepared by the Department in conformity with the provisions of the act of Congress approved March 2, 1895 (28 Stat. L., 875–903), a copy of which was furnished for your information and use with Department letter of January 30th last, in compliance with that provision of the aforesaid act requiring that full opportunity be given "to all parties in interest to be heard."

The objections set out in your said communication as to the aforesaid findings are, briefly, that error has been committed; that the findings are in contravention of the facts and of the laws and of the regulations of the Indian Office regarding the payment of annuities to Indians.

In support of these contentions the acts of June 30, 1834 (4 Stat. L., 737); March 3, 1847 (9 Stat. L., 203); August 30, 1852 (10 Stat. L., 41), and August 15, 1876 (19 Stat. L., 199), are cited, and the regulations of the Indian Office applicable to annuity payments are also referred to.

Objection is made to the first finding on the ground that—

More than nine years prior to the enactment of the last quoted provision of law (act of August 15, 1876) the Sacs and Foxes of the Mississippi in Iowa had received the sanction of Congress to remain in that State, and they had received the sanction of the State to reside there twenty years before, with notice to the United States.

The case of certain stray bands of Winnebagoes is also cited as a precedent for the adjustment of the tribal funds as claimed by the Iowa Sacs and Foxes (act of June 25, 1864, 13 Stat. L., 172).

The grounds of objection set up as to the finding in the second claim refer principally to that part of the claim for the share of the said band to the $1,500 annually for several years appropriated or set aside from the tribal annuities by act of Congress for a physician and the purchase of medicine, the contention being that—

The apportionment named is not subject to Congressional enactment, but to "provisions of treaties." There is no existing treaty provision for the support of a physician or for the purchase of medicine.

Sufficient answer to this seems to be warranted by the provisions of the sixth article of the treaty of October 1, 1859 (15 Stat. L., 469), wherein provision is made that—

In order to render unnecessary any further treaty engagements or arrangements hereafter with the United States, it is hereby agreed and stipulated that the President, with the assent of Congress, shall have power to modify or change any of the provisions of former treaties with the Sacs and Foxes of the Mississippi in such manner and to whatever extent he may judge to be necessary and expedient for their welfare and best interest.

This provision of the treaty of 1859 is still in force, and is ample authority for the President of the United States, with the consent of Congress, to make any disposition of the annuities of the tribe that will inure to their benefit, not in conflict with subsequent treaty stipulations or the laws of Congress.

Now, as to the finding in the first claim.

Article 3 of the treaty of 1804 (7 Stat. L., 85) provides:

In consideration of the cession and relinquishment of land made in the preceding article, the United States will deliver to the said tribes, at the town of St. Louis or some other convenient place on the Mississippi, yearly, and every year, goods suited to the circumstances of the Indians of the value of one thousand dollars. * * *

Section 9 of article 2 of the treaty of October 21, 1837 (7 Stat. L., 540–541), provides for the investment of $200,000—

and to guarantee to the Indians an annual income of not less than five per cent, the said interest to be paid to them each year, in the manner annuities are paid, at such time and place, and in money or goods, as the tribe may direct.

Again, by article 2 of the treaty of October 11, 1842 (7 Stat. L., 596), it is agreed:

In consideration of the cession contained in the preceding article, the United States agree to pay annually to the Sacs and Foxes an interest of five per centum upon the sum of eight hundred thousand dollars.

These stipulations constitute the law governing the tribal annuities of the Sacs and Foxes, and are solemn obligations on the part of the Government to annually pay them certain stipulated sums at some "convenient place" or at such "time and place" as the tribe may direct.

The several acts of 1834, 1847, and 1852, cited by you, are general in their scope, conferring discretionary powers on the President and the Department, and in no manner conflict with or contravene the provisions of the aforesaid treaties as to the manner or the time or place or places of the payment of the tribal annuities. The act of August 15, 1876, also cited by you, has no application in this case.

In article 6 of the treaty of 1842 this provision also appears:

It is further agreed that the Sacs and Foxes may, at any time, with the consent of the President of the United States, direct the application of any portion of the annuities payable to them under this or any former treaty. * * *

By this stipulation the Sacs and Foxes retain control of all their annuities, subject to treaty provisions, and this has never been modified, except, as hereinbefore stated, by article 6 of the treaty of 1859, authorizing the President to "modify or change any of the provisions of former treaties," and by certain provisions in the treaty of 1867.

Again, the following provision appears in the said treaty of 1867, article 8 (15 Stat. L., 497):

No part of the invested funds of the tribe, or of any moneys which may be due to them under the provisions of previous treaties, nor of any moneys provided to be paid to them by this treaty, shall be used in payment of any claims against the tribe accruing previous to the ratification of this treaty, unless herein expressly provided for.

This stipulation of itself seems to be a complete bar to any claim of the Iowa Sacs and Foxes prior to the date of the ratification of that treaty, October 14, 1868.

Although recognized by this treaty, there is much doubt whether the said Iowa branch would have been entitled to any of its benefits prior to the date of its ratification but for the act of March 2, 1867 (14 Stat. L., 507), under the provisions of which a payment was made to them in that year.

There seems to be little similarity between this case and that of the Winnebagoes, cited by you, except that in both instances small bands strayed away and remained separated from their tribes. In fact, in other respects they are totally different, as will appear upon a statement of the cases.

The Iowa Sacs and Foxes settled in that State, some of them several years prior to 1867 and others between 1862 and 1866, and were recognized by act of Congress in the year first named, and by the treaty with the tribe made in the same year, not in the original draft of the latter, however, but being named in an amendment prepared in the Senate when the articles were before that body for consideration, on July 25, 1868, more than a year subsequent to the conclusion of the treaty between the contracting parties.

In compliance with the above-named act of Congress payments to them were immediately begun and have continued ever since, with varying amounts, to conform with the requirements of subsequent legislation in their behalf.

In the case of the Winnebagoes, it appears that certain stray bands of this tribe remained in Wisconsin and Minnesota, upon lands ceded to the United States by treaty of 1859 (12 Stat. L., 1101), failing to go with the rest of the tribe upon the diminished reserve created by that treaty.

In 1864, by act of June 25, of that year (13 Stat. L., 172), Congress, in making an appropriation for "deficiencies in subsistence and expenses of removal and support of the Sioux and Winnebago Indians of Minnesota, during the fiscal year ending June thirtieth, eighteen hundred and sixty-four," enacted the following relating to the Winnebagoes:

> *Provided*, That the proportion of annuities to which said stray bands of Pottawatomies and Winnebagoes would be entitled if they were settled upon their reservations with their respective tribes shall be retained in the Treasury to their credit, from year to year, to be paid to them when they shall unite with their said tribes. * * *

At the time of this legislation the Winnebago tribe had been removed to the then Territory of Nebraska, under the provisions of the act of February 21, 1863 (12 Stat. L., 658), but the stray bands referred to, having failed to rejoin the tribe in Wisconsin, did not accompany their brethren to the new reservation in Nebraska.

The provisions of the act of 1864 seem not to have been complied with; therefore by act of January 18, 1881 (21 Stat. L., 315), Congress directed that a census be taken of those residing in Nebraska and Wisconsin, and that the proportion of the annuities of the latter for the period from the date of the aforesaid act of 1864 be ascertained and paid to them, a method of adjustment between the two branches of the tribe being provided for in the said act of 1881.

In this case, therefore, it appears that the provision of law requiring the proportion of annuities due the aforesaid stray bands of Winnebagoes to be retained in the Treasury for their benefit was not fulfilled, *and that, by subsequent act of Congress*, these arrearages were made

good to them, but no provision was made for any arrearages prior to the act of 1864, nor were any ever paid, although the said stray bands were separated and absent from their tribe from or prior to the date of the treaty with the tribe of April 15, 1859, before noted.

That it was not the practice or custom, but was against the policy of the Department to pay annuities to Indians off their reservations, is well established by the following extract from a letter, dated September 17, 1863, of the Secretary of the Interior to Francis Beveridge, who had petitioned in behalf of certain Winnebago Indians, then living off their reservation, for their distributive shares of the tribal annuities (Interior Department files, record of letters sent, vol. 4, p. 376), viz:

> * * * The policy of the Government is to establish the Winnebagoes in such manner as will enable them to obtain their living by agricultural pursuits, and to that end large expenses have been incurred in the preparation of their new homes, on the upper Missouri, for the experiment; and the information possessed by the Department encourages the belief that the effort will be attended with success. All the means possessed by the Winnebagoes are necessary to the successful prosecution of the enterprise, and the proposition to parcel out their funds can not, therefore, be entertained.
>
> If the parties asking the distribution of these annuities in Minnesota have become so far civilized as to justify their remaining in that State, and taking upon themselves the duties of citizens, they can not, if they remain in the State, expect to be treated by the Department as Indians. All has been done for them by the Government that they had a right to expect. * * * If they desire, still, to be considered Winnebagoes they must unite with their tribe at their new home, and share their perils, as well as their fortunes. * * *
>
> The request of the petitioners can not be granted.
>
> Very respectfully, your obedient servant,
>
> J. P. USHER, *Secretary of the Interior.*

The Sacs and Foxes of Iowa had less cause for withdrawing from the tribe than had these Winnebagoes in their refusal to rejoin theirs. The latter tribe had just been removed from their old homes to a new reservation in another Territory, where their affairs were as yet necessarily unsettled and the new life an experiment.

The Iowa Sacs and Foxes, however, had remained upon their new reservation in Kansas for a period of about ten years (a part of them for many years more) prior to their separation from the tribe. In that time they had the opportunity to become accustomed to their surroundings; implements for farming were furnished; annuities regularily paid there, and everything possible done to make them comfortable and for their welfare. But they left their reservation and went to Iowa, for what reason? They say because—

> The locality of the said new reservation in Kansas proving to be not so healthful, and becoming for this and other reasons dissatisfied with the change, a portion of the tribe returned to the State of Iowa prior to the year 1855.

Their assertion of the unhealthfulness of the new locality has been shown to be a fallacy. Capt. John Beach, their agent, prior and subsequent to their removal in 1845, gives very positive and decided testimony on this point, as has been shown in the "Statement of account."

That the aforesaid policy of the Government was wise can not be doubted. Had all the dissatisfied and disgruntled bands of Indians been permitted to separate from their tribes at will and allowed to set up separate establishments, the Government would have been put to much additional trouble in caring for them, and enormous additional expenditures would have been involved. Upwards of $40,000 have been thus expended by the Government in the past twenty-nine years in maintaining a separate establishment for the Sacs and Foxes in Iowa alone.

Misapplication is alleged of article 7 of the treaty of 1859 to the case of the Sacs and Foxes of Iowa, as quoted in the "Statement of account." You say:

> No annuities for the tribe were created by that treaty. No claim is based upon that treaty, near or remote, and it has no bearing upon the annuities of the tribe.

It is true that no annuities were created by that treaty; but it is also true that article 6 of the same treaty gives the President of the United States, with the consent of Congress, jurisdiction over any of the provisions of former treaties, to "whatever extent he may judge to be necessary and expedient for their welfare and best interest." To that extent article 7 has application to the Iowa branch.

But application of the aforesaid article in the "Statement of account" was made with especial reference to those of the Iowa branch who left their reservation in Kansas in 1862 and later years, and who were parties to the treaty of 1859.

It is not doubted, however, if there had been any specific benefits, remote or near, accruing to the tribe under the said treaty, and if the proceeds of the surplus lands sold under the fourth article had realized a sum over and above the amount of the tribal debts, provided by the fifth article to be paid from such proceeds, that the memorialists would have claimed their share thereof.

Objection is made also to the deduction of the sum of $7,600.40 from the finding on their third claim, on account of excessive payments to the memorialists in the fiscal years 1885 and 1886.

In support of this objection you say:

> We protest against any such deduction. We contend that the claimants did not receive their pro rata share of the annuities between the years from 1867 to 1894, or to date, inclusive. If, as is held, "this matter was properly disposed of by Secretary Lamar," and that it consequently can not be reopened for readjustment for the benefit of the Sac and Fox Indians of Iowa, it should not be disturbed for the benefit of the Sac and Fox Indians of Oklahoma. If it is a settled account as to *one*, it should be and remain a settled account to *all*. If it should be reopened for a fair, equitable, and just adjustment of the item annually expended for physician and medicine alone for the Oklahoma Sacs and Foxes, a large balance would be found in favor of the Sacs and Foxes of Iowa.

In his letter of March 27, 1886, submitting the questions upon which Secretary Lamar made the rulings set out in his letter of June 1, 1886, the Commissioner of Indian Affairs requested instructions as to the action he should take with respect to future distribution of annuities between the two branches of the tribe—whether the $5,000 for the support of government, the $5,000 for support of schools, and the $1,500 for physician and medicine should be deducted before calculation was made of the proportion due to each of the said branches, stating that such information was necessary to enable his office to make proper distribution of the fund appropriated or about to be appropriated for the ensuing fiscal year, "or whether the whole amount should be divided as has been the practice for the last two years, and require the Indians in the Indian Territory to pay the expenses of their school, national government, and physician out of the sum of $25,200, their present quota of the annual appropriation for said Indians."

The question of the action of the Indian Office in withholding in the two preceding fiscal years annuities due the Oklahoma branch under treaty provisions was not submitted by the Commissioner in his letter of March 27, except incidentally, as stated, and was not passed upon by the Secretary of the Interior in his letter of June 1.

It is manifest, therefore, that sums due them under the solemn obli*gations of treaties,* and to which they were justly entitled, were with-

held from the Oklahoma branch, and that the Iowa branch, having no claim thereto, were the beneficiaries of these sums.

The question of the restitution of these sums has never before been passed upon by the Department. It is not questioned that if the matter had been submitted for decision the Department would promptly have directed an adjustment thereof between the two branches of the tribe.

Nor is it doubted that the Department has full jurisdiction in the matter, under the act of March 2, 1895, directing the examination of the claim of the Sacs and Foxes of Iowa for their share of the tribal annuities, etc.

The findings set out in the aforesaid "Statement of account" are hereby affirmed.

Very respectfully,

HOKE SMITH,
Secretary.

J. M. VALE, Esq.,
Atlantic Building, City.

O

54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 16[illegible].

IN THE SENATE OF THE UNITED STATES.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING,

In response to a resolution of the Senate of March 2, 1896, a report of the Secretary of State, accompanied by correspondence touching the arrest in Habana of Marcos E. Rodriguez, Luis Someillan y Azpeitia, and Luis Someillan y Vidal, citizens of the United States.

MARCH 13, 1896.—Referred to the Committee on Foreign Relations and ordered to be printed.

To the Senate:

I transmit herewith, in response to a resolution of the Senate of March 2, a report from the Secretary of State, accompanied by copies of correspondence, touching the arrest in Habana of Marcos E. Rodriguez, Luis Someillan y Azpeitia, and Luis Someillan y Vidal, citizens of the United States.

GROVER CLEVELAND.

EXECUTIVE MANSION,
Washington, March 13, 1896.

DEPARTMENT OF STATE,
Washington, March 10, 1896.

The Secretary of State, to whom was referred the resolution of the Senate of March 2, 1896, requesting the President, "if not incompatible with the public interest, to report to the Senate respecting the arrest and forcible removal of Mark E. Rodriguez, a citizen of the United States, on board the United States mail steamer *Olivette*, in the harbor of Habana, on Wednesday, the 15th instant (January); also respecting the arrest of Luis Someillan and his son, citizens of the United States, in the city of Habana," has the honor to lay before the President the correspondence, copy of which is annexed, and which contains all the information in the Department respecting the subject-matter of the resolution.

Respectfully submitted.

RICHARD OLNEY.

List of papers.

Mr. Williams to Mr. Uhl, January 19, 1896 (telegram).
Mr. Williams to Mr. Uhl, No. 2721, January 20, 1896.
Mr. Williams to Mr. Uhl, No. 2723, January 20, 1896 (inclosures).
Mr. Williams to Mr. Uhl, No. 2724, January 20, 1896 (inclosure).
Mr. Williams to Mr. Uhl, No. 2725, January 20, 1896 (inclosure).
Mr. Uhl to Mr. Williams, No. 1234, January 22, 1896.
Mr. Call to Mr. Olney, January 22, 1896 (inclosure).
Mr. Olney to Mr. Call, January 22, 1896.
Mr. Call to Mr. Olney, January 28, 1896 (inclosure).
Mr. Uhl to Mr. Williams, No. 1245, January 31, 1896.
Mr. Uhl to Mr. Williams, No. 1248, February 1, 1896.
Mr. Olney to Mr. Call, February 1, 1896.
Mr. Williams to Mr. Uhl, No. 2759, February 10, 1896.
Mr. Olney to Mr. Call, February 11, 1896.
Mr. Olney to Mr. Call, February 25, 1896.

Mr. Williams to Mr. Uhl.

[Telegram.]

HABANA, *January 19, 1896.*

Marcos Rodriguez, Luis Someillan, father, and Luis Someillan, son, naturalized American citizens, arrested last Wednesday charged sedition rebellion, have been subjected civil jurisdiction in accordance with protocol, eighteen hundred and seventy-seven.

WILLIAMS, *Consul-General.*

Mr. Williams to Mr. Uhl.

No. 2721.] UNITED STATES CONSULATE-GENERAL,
Habana, January 20, 1896. (Received January 27.)

SIR: On Sunday, the 19th instant, I received a telegram saying:

KEY WEST, *January 19, 1896.*

AMERICAN CONSUL HABANA:

Why was Marcos E. Rodriguez arrested on board *Olivette* last Wednesday? He is a naturalized citizen. Answer.

OTTO, *United States Commissioner.*

Therefore, and supposing Mr. Otto to be a subordinate of some other Department of the United States Government, I beg to submit the above transcription for the Department's instruction to this consulate-general, in accordance with that part of paragraph 130 of the Consular Regulations, a part of which says:

This instruction is especially applicable to communications from subordinates of other Departments. Such communications should not be answered without first obtaining permission from the Department to do so.

I am, etc.,

RAMON O. WILLIAMS, *Consul-General.*

Mr. Williams to Mr. Uhl.

No. 2723.] UNITED STATES CONSULATE-GENERAL,
Habana, January 20, 1896. (Received January 27.)

SIR: I have the honor to inclose, for the information of the Department, a copy of a communication addressed by me to the Governor-General on the 17th instant, in relation to the arrest of Mr. Marcos E.

Rodriguez, a naturalized citizen of the United States, of Cuban birth, in which I asked for him the enjoyment of the guarantees of the protocol of the 12th of January, 1877; and also a copy of the answer thereto of the secretary-general, from which it appears that Mr. Rodriguez is charged with sedition and rebellion, the civil court of the cathedral district of this city being encharged with the examination of the proceedings in his case. Mr. Rodriguez has been allowed an advocate for his defense in accordance with the protocol.

I am, etc.,

RAMON O. WILLIAMS, *Consul-General.*

[Inclosure in No. 2723.]

Mr. Williams to the Governor-General.

UNITED STATES CONSULATE-GENERAL,
Habana, January 17, 1896.

EXCELLENCY: It having come to my knowledge that Mr. Marcos Rodriguez, a citizen of the United States, has been arrested and is now detained at the police headquarters, deprived of outside communication, I have, therefore, and in compliance with the instructions of my Government, to ask your excellency to be pleased to inform me of the reasons of his arrest, and that I be allowed to communicate with him; and, also, that whatever may be the reasons of his arrest the protocol of January 12, 1877, between the United States and Spain be strictly observed, with the complete enjoyment of its guarantees for his defense, and consequently to allow him to communicate freely with the lawyer and solicitor he may appoint.

I am, etc.,

RAMON O. WILLIAMS, *Consul-General.*

[Inclosure 2 in No. 2723—Translation.]

The Governor-General to Mr. Williams.

THE GOVERNMENT-GENERAL OF THE ISLAND OF CUBA,
OFFICE OF THE SECRETARY,
Habana, January 17, 1896.

By order of his excellency the Governor-General, I have the honor to acknowledge the receipt of your three communications of this date, and to inform you that the parties under arrest, Marcos Rodriguez, Luis Someillan y Azpeitia, and Luis Someillan y Vidal, have been subjected for trial to the ordinary jurisdiction, on the suspicion of being guilty of acts of sedition and rebellion, the judge of instruction of the cathedral district being encharged with the examination of the proceedings by virtue of a request of the prosecuting attorney of the superior court of Habana; and also that the accused may appoint advocate and solicitor for their defense, giving them personally the instructions which they may desire, at their prison, to which effect the president of the superior court of this territory will be communicated to-day.

I am, etc.,

FRANCISCO CALVO MUNOZ.

Mr. Williams to Mr. Uhl.

No. 2724.] UNITED STATES CONSULATE-GENERAL,
Habana, January 20, 1896. (Received January 27.)

SIR: I have the honor to inclose, for the information of the Department, a copy of a communication addressed by me to the Governor-General on the 17th instant, in relation to the arrest of Mr. Luis Someillan, sr., a naturalized citizen of the United States, of Cuban birth, in which I asked for him the enjoyment of the guarantees of the

protocol of the 12th of January, 1877. The secretary general answered me in a communication on the same day, copy and translation of which accompany my previous dispatch, No. 2723, of this date, from which it appears that Mr. Someillan is charged with sedition and rebellion, the civil court of the cathedral districk of this city being encharged with the examination of the proceedings in his case. I understand that Mr. Alfredo Zayas, of the Habana bar, has been engaged for his defense.

I am, etc.,

RAMON O. WILLIAMS, *Consul-General.*

[Inclosure in No. 2724.]

Mr. Williams to the Governor-General.

UNITED STATES CONSULATE-GENERAL,
Habana, January 17, 1896.

EXCELLENCY: Having received information from Mrs. Josefina Someillan de Hernandez to the effect that her father, Mr. Luis Someillan y Azpeitia, a citizen of the United States, has been arrested and is now detained at the police headquarters and deprived of outside communication, I have, therefore, and in compliance with the instructions of my Government, to ask your excellency to be pleased to inform me of the reasons of his arrest and that I be allowed to communicate with him; and also that, whatever may be the reasons of his arrest, the protocol of January 12, 1877, between the United States and Spain be strictly observed, with the complete enjoyment of its guarantees for his defense, and consequently to allow him to communicate freely with the lawyer and solicitor he may appoint.

I am, etc.,

RAMON O. WILLIAMS, *Consul-General.*

Mr. Williams to Mr. Uhl.

No. 2725.] UNITED STATES CONSULATE GENERAL,
Habana, January 20, 1895. (Received January 27, 1896.)

SIR: I have the honor to inclose, for the information of the Department, a copy of a communication addressed by me to the governor-general on the 17th instant in relation to the arrest of Mr. Luis Someillan, jr., a naturalized citizen of the United States of Cuban birth, in which I asked for him the enjoyment of the guaranties of the protocol of the 12th of January, 1877.

The secretary-general answered me in a communication on the same day, copy and translation of which accompany my dispatch, No. 2723, of this date, from which it appears that Mr. Someillan, jr., is charged with sedition and rebellion, the civil court of the Cathedral district of this city being encharged with the examination of the proceedings in his case.

I understand that Mr. Alfredo Zayas, of the Habana bar, has been engaged for his defense.

I am, etc., RAMON O. WILLIAMS.

[Inclosure in No. 2725.—Translation.]

Mr. Williams to the Governor-General.

UNITED STATES CONSULATE GENERAL,
Habana, January 17, 1896.

EXCELLENCY: Mrs. Nelia de Miguel de Someillan advises me that her husband, Mr. Luis Someillan y Vidal, a citizen of the United States, has been arrested and is now detained at the police headquarters deprived of outside communication; I have, *therefore, and in compliance* with the instructions of my Government, to ask your

excellency to be pleased to inform me of the reasons of his arrest, and that I be allowed to communicate with him; and also that whatever may be the reasons of his arrest, the protocol of January 12, 1877, between the United States and Spain be strictly observed, with the complete enjoyment of its guaranties for his defense; and consequently to allow him to communicate freely with the lawyer and solicitor he may appoint.

I am, etc., RAMON O. WILLIAMS, *Consul-General.*

Mr. Uhl to Mr. Williams.

No. 1234.] DEPARTMENT OF STATE,
Washington, January 22, 1896.

SIR: I have received your telegram of the 19th instant, which reads as follows:

Marcos Rodriguez Luis Someillan, father, and Luis Someillan, son, naturalized American citizens, arrested last Wednesday, charged sedition rebellion. Have been subjected civil jurisdiction in accordance with protocol seventy-seven.

I am, etc.,

EDWIN F. UHL.

Mr. Call to Mr. Olney.

Respectfully forwarded to the Department of State as a copy of a letter just received by me, with the request that the above-mentioned parties have the protection of the Government of the United States.

WILKINSON CALL.

[Inclosure.]

Mr. Recio to Mr. Call.

KEY WEST, FLA., *January 22, 1896.* (Received January 30, 1896.)

DEAR SIR: I beg to acknowledge the receipt of your answer to my telegram, and beg that you will use your very best efforts to see that Marcos E. Rodriguez, Luis Someillan, and his son, Luis, who were arrested in Habana, have the protection of the consul, and see that he does his duty.

As to the arrest of Rodriguez, I think that it is an outrage and a direct insult to the United States. He was in Habana some few days and had permission to leave, and after he was on board of the American steamer *Olivette* was arrested and taken ashore. He had nothing to do with the revolution. Furthermore, I have personal knowledge that he refused to take a letter to a lady in Habana for fear that it might be misconstructed.

By giving this your best attention you will greatly oblige,

Yours, truly, C. RECIO.

Mr. Olney to Mr. Call.

DEPARTMENT OF STATE, *January 22, 1896.*

SIR: I have the honor to acknowledge the receipt of your letter of the 21st instant, concerning a telegram received by you from Key West, Fla., relative to the case of Messrs. Rodriguez and Someillan.

I append for your information a copy of a telegram from the consul-general of the United States at Habana, of the 19th instant, upon the subject.[1]

I have, etc., RICHARD OLNEY.

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[1] *Supra.*

Mr. Call to Mr. Olney.

Respectfully forwarded to the Secretary of State.

WILKINSON CALL.

[Inclosure.]

Mr. Harris to Mr. Call.

KEY WEST, FLA., *January 28, 1896.* (Received February 6, 1896.)

DEAR SIR: Inclosed herewith you will please find a copy of the resolution as passed by Key West Lodge, No. 13, I. O. O. F., which explains itself.

The lodge requests that you give this matter that attention which we are satisfied your well-known sympathy of the weak will warrant.

Very respectfully,

W. HUNT HARRIS.

ODD FELLOWS HALL.

[Key West Lodge, No. 13, Independent Order of Odd Fellows.]

At a regular meeting of the above lodge held on the 27th day of January, 1896, the following motion was made by Brother W. Hunt Harris and unanimously adopted:

"Whereas it has come to our knowledge that Brother Marcos R. Rodriguez was, on the 15th day of January, A. D. 1896, while on his way from the city of Habana, Cuba, to the city of Key West, on board the American steamship *Olivette*, arrested by Spanish officials and is now detained in prison in the city of Habana; and

"Whereas the said Rodriguez is an American citizen and an Odd Fellow in good standing: Therefore be it

"*Resolved*, That we do earnestly request our Senators and Representatives at Washington to urge the Department of State to adopt all lawful means to secure the release of our said brother."

A true and correct copy of the resolutions as passed.

OTTIO JOHNSON.
W. F. HENSON, *Recording Secretary.*

Mr. Uhl to Mr. Williams.

No. 1245.] DEPARTMENT OF STATE,
Washington, January 31, 1896.

SIR: I have received your dispatch, No. 2721, of the 20th instant, submitting a telegram addressed to you by one Otto, of Key West, Fla., relative to the arrest of Marcos E. Rodriguez.

Your course in not replying to the telegram is approved.

I am, etc.,

EDWIN F. UHL.

Mr. Uhl to Mr. Williams.

No. 1248.] DEPARTMENT OF STATE,
Washington, February 1, 1896.

SIR: I inclose for your information a copy of a letter from Mr. C. Recio,[1] referred to this Department by the Hon. Wilkinson Call, relating to the arrest and imprisonment of Marcos E. Rodriguez Luis Someillan and Luis Someillan, jr.

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[1] Supra.

Senator Call has been informed of the substance of your telegram of the 19th ultimo, reporting that the above-named persons have been subjected to the civil jurisdiction in accordance with the protocol of January 12, 1877.

I am, etc., EDWIN F. UHL.

Mr. Olney to Mr. Call.

DEPARTMENT OF STATE,
Washington, February 1, 1896.

SIR: I have the honor to acknowledge the receipt of a letter of the 22d ultimo from Mr. C. Recio, referred by you to this Department, relative to the imprisonment in Cuba of Marcos E. Rodriguez, Luis Someillan, and Luis Someillan, jr. A copy of the letter has been sent to the consul-general at Habana.

For your further information I have to say that the consul-general, in his telegram of the 19th ultimo, reporting the arrest of the above-named persons on the charge of sedition and rebellion, states that they have been subjected to the civil jurisdiction for trial, in accordance with the protocol of January 12, 1877, between the United States and Spain.

I have, etc.,

RICHARD OLNEY.

Mr. Williams to Mr. Uhl.

No. 2759.] UNITED STATES CONSULATE-GENERAL,
Habana, February 10, 1896. (Received February 17.)

SIR: I beg to acknowledge the receipt of the Department's instruction, No. 1248, of the 1st instant, inclosing a copy of a letter, dated January 22, from Mr. C. Recio, of Key West, Fla., and indorsed by the Hon. Wilkinson Call, relating to the arrest of Mr. Marcos C. Rodriguez, a citizen of the United States, by the authorities of this place, and to report, with reference to previous correspondence, that just as soon as information was received of the arrest of Mr. Rodriguez this office proceeded immediately to obtain his transfer for trial from the court-martial to the civil jurisdiction, in accordance with the convention between the United States and Spain of the 12th of January, 1877, and this having been obtained, consular functions ceased and those of the advocate and solicitor commenced. Accordingly, Mrs. Rodriguez has appointed Mr. Alfredo Zayas, of the Habana bar, as advocate for his defense, and he is giving the case his assiduous attention.

I am, etc., RAMON O. WILLIAMS.

Mr. Olney to Mr. Call.

DEPARTMENT OF STATE,
Washington, February 11, 1896.

SIR: I have the honor to acknowledge the receipt by reference from you of a letter dated the 28th ultimo, from Mr. W. Hunt Harris, in behalf of Marcos Rodriguez, who has been arrested and imprisoned in Cuba charged with sedition and rebellion.

In reply I have the honor to inform you that the consul-general at Habana is watching the case of Mr. Rodriguez, and reports that he has been transferred to the civil or ordinary jurisdiction for trial, in accordance with the provisions of the protocol of January 12, 1877, between the United States and Spain.

I have, etc., RICHARD OLNEY.

Mr. Olney to Mr. Call.

DEPARTMENT OF STATE,
Washington, February 25, 1896.

SIR: Referring to previous correspondence on the subject, I have the honor to transmit herewith for your information a copy of dispatch, No. 2759, of the 10th instant, from the consul-general at Habana, relative to the arrest by the authorities at that place of Marcos E. Rodriguez, esq., a citizen of the United States.

I have, etc., RICHARD OLNEY.

O

54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 169.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1896.—Referred to the Committee on Public Lands and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE SECRETARY OF THE INTERIOR, TRANSMITTING, IN RESPONSE TO SENATE RESOLUTION OF MARCH 10, 1896, CONCERNING THE PROGRESS AND RESULT OF PUBLIC-LAND SURVEYS IN THE INDIAN TERRITORY UNDER THE DIRECTION OF THE UNITED STATES GEOLOGICAL SURVEY, THE REPORT OF THE DIRECTOR COVERING THE POINTS SET FORTH.

DEPARTMENT OF THE INTERIOR,
Washington, March 14, 1896.

SIR: I have the honor to hand you herewith report of the Director of the Geological Survey, dated the 12th instant, in response to Senate resolution of March 10, 1896, concerning progress and result of public-land surveys in the Indian Territory under direction of the Geological Survey, etc.

The report of the Director appears to cover all the points set forth in the resolution.

Very respectfully, HOKE SMITH,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
UNITED STATES GEOLOGICAL SURVEY,
Washington, D. C., March 12, 1896.

SIR: I am in receipt, by reference from the Department, of a copy of Senate resolution of March 10, 1896, calling for information regarding the progress and character of the subdivision surveys of the lands in Indian Territory which are being carried on by this office.

The act authorizing the survey is as follows:

For the survey of the lands in the Indian Territory, two hundred thousand dollars, or so much thereof as may be necessary, to be immediately available: *Provided*, That the Secretary of the Interior may, in his discretion, direct that the surveys herein authorized, or any part of them, in the Indian Territory, shall be made under the supervision of the Director of the Geological Survey, by such persons as may be employed by or under him for the purpose. And such surveys shall be executed under instructions to be issued by the Secretary of the Interior, and subdivisional surveys shall be executed under the rectangular system, as now provided by law: *Provided further*, That when any surveys shall have been so made and plats and field notes thereof prepared, they shall be approved and certified to by the Director of the Geological Survey, and two copies thereof shall be returned, one for filing in

the Indian Office and one in the General Land Office; and such surveys, field notes, and plats shall have the same legal force and effect as heretofore given to the acts of surveyors-general: *Provided further*, That all laws inconsistent with the provisions hereof are declared to be inoperative as respects such surveys. (Indian act, March 2, 1895.)

The plan for the field work under which the survey was inaugurated is as follows:

Method of doing the work.—It is proposed to survey all township exteriors and standard lines, a total of 4,500 miles, by men who are experienced in that kind of work, who are now connected with the United States Geological Survey. This will probably require four parties, each of which will comprise, besides the surveyor, a rodsman, two chain men, one or two corner men, a cook and a driver; and, in the case of the standard lines, two additional chain men and one additional rodsman, since these lines must be double chained. These parties will live in camp, and will be provided with facilities for moving camp frequently. The surveyors will not only run and locate the lines, but will make profiles of them by vertical angles.

The subdivision of the townships will be done by men of experience in that class of surveying, who will be hired temporarily for that purpose. The subdivision parties will consist, besides the surveyor, of a rodsman, two chain men, and one or two corner men. They will be provided with camp outfits and animals for carrying the surveying corps to and from their work, but will, as a rule, hire the facilities for moving camp, inasmuch as they will move camp infrequently. At least twelve such subdivision parties, and very likely more, will be found necessary and they will, if practicable, be grouped—two, three, or four parties in one camp. Each such group of subdivision parties will be placed in charge of a topographer of this office, who will measure elevations in the interior of the townships, resting his measurements upon the heights determined in the township exteriors, and who will sketch the topography. He will have control of the surveyors who are making the subdivisions and will superintend their work. A thorough examination will be made of every township monument, as the topographer must occupy every corner in marking his work.

Locality of work.—It is proposed to commence work in the western portion of the Choctaw Nation by extending eastward the base line of the Chickasaw Nation, to establish a new principal meridian on or near the eastern line of range 8 east, and to build up on these lines a system of surveys which will be consistent with those of the Chickasaw Nation, so far as they may be accurate and correct, but will not conform to any irregularities which may exist in those surveys. The plan of work will, of course, conform to the requirements of the General Land Office as specified in its manual.

It is proposed to survey first the western half of the Choctaw Nation, working generally from the west northward and eastward, and extending the work into the Creek, Cherokee, and Seminole country as far as time and money will permit.

Office work.—For the drawing of plats and the making of fair copies of field notes, it is proposed to employ draftsmen and clerks in the office in Washington. Rough plats of the township exteriors and of subdivisions and the original field notes will be prepared in the field and forwarded to this office for the preparation of these copies.

It is proposed to send parties to the field as soon as the necessary arrangements in Washington can be made, the expectation being that field work can be commenced by the 1st of April upon the standard lines; that as soon as a block of townships has been outlined the work of surveying township exteriors will be commenced, and that as soon as the exteriors of such a block have been surveyed that the subdivision parties will be organized and the work of subdivision taken up. It will be entirely feasible to continue field work until the end of November, and, if necessary, it can be continued through the winter, although the shortness of the days will render it less economical than to work in summer.

It is proposed to put two triangulation parties in the field with a view to carrying over the entire area a system of primary triangulation permanently marked, and connecting the points in this primary triangulation with township corners, some corner of each township to be connected with a primary triangulation point. The purpose of this is, first, to serve as a check upon the accuracy of the work and, second, to furnish permanent points from which corners may be recovered in case the marks should be lost. These parties will measure a base on the Missouri, Kansas and Texas Railroad, and expansion will be carried eastward, northward, and southward therefrom.

The triangulation will, as stated above, serve the purpose of an examination of all exterior lines, and the topographers who prepare the topographic map will, in the course of their duties, thoroughly examine the subdivision work.

Employees.—The men employed as surveyors on subdivision work should be men

experienced in this class of surveying, and I have had full assurance that such men can be obtained for from $100 to $125 per month, to be hired at the outfitting point and be discharged at the same point at the close and completion of the work for which engaged. The assistants, such as rodsmen, chain men, corner men, and general camp men, to be employed under the existing regulations governing the employment of such men in the Geological Survey. Such men can be hired at from $30 to $35 per month, being taken up at the outfitting point and discharged under the same conditions as the subdivision surveyors.

Inspection.—The subdivision surveys will be made by parties who work in advance of the topographer who has them immediately in charge. The exterior lines will be connected with stations in a primary triangulation carried on independently, and the topographer will visit every section corner while making his topographic map, thus inspecting every corner with relation to the marking thereof on the ground by stakes, pits, etc. He is moreover working directly in connection with the surveyors, and is able to inspect their notes at night and to keep informed as to their methods of work.

Under this plan the work was begun and carried forward.

Organization of force.—The work constitutes a division in the Topographic Branch of this office, and is in charge of a division chief. The field work is carried on by 22 surveyors, 1 of whom is engaged in running standard lines, 5 in running township exteriors, which close upon and test the standard lines, and 16 in running subdivision or section lines, which in turn close upon and test the township exteriors. Furthermore, the entire work is controlled by a system of triangulation, carried on by independent parties. Certain of the surveyors are men in the permanent employ of this office, and others have been temporarily employed for this work.

The surveying parties are provided with tents, wagons, animals, and other necessities of camp life.

Standard lines are run by transit and checked constantly by azimuth observations upon the pole star. Township exteriors are in some cases run by transit and in other cases by solar compass. The section lines are run with solar compass or with a solar attachment upon the transit. Standard lines are in all cases double chained.

History of the work.—The work commenced early in April, 1895, by the extension of the Indian base eastward for 50 miles in the Choctaw Nation by one standard line party. The second guide meridian east, which runs through the western part of the Choctaw Nation, was extended northward and southward as a principal meridian by a second standard line party.

During the month of April two parties for running township exteriors were placed in the field, and during the month of May eight subdivision parties for running section lines commenced work. From time to time this force was increased until by the 1st of October the number of surveyors given above, namely 22, was in the field and at work. Work has been continued during the fall and winter, and is at present in full progress.

A small office force is maintained in South McAlester, the headquarters in Indian Territory, for the purpose of writing up field notes, and a few draftsmen and copyists are employed in this office for making copies of the notes and preparing the plats.

Progress of the work.—The progress made in this work up to the end of February may be summarized by the statement that 14,127 miles of line have been run. This is classified as follows:

	Miles.
Standard lines	1,024
Township exteriors	2,195
Subdivision and meander lines	10,908
Total	14,127

Up to the close of February, 157 full townships had been subdiv. and 26 fractional townships, making a total of 183 townships divided.

The work is carried on in all respects in strict accordance with requirements of the General Land Office, as expressed in its Man and under instruction of the Secretary of the Interior. The lines marked by monuments at every section and quarter-section corner that Manual prescribes, and the stakes or stones marking the corn and the witness trees are properly marked.

The provision under which the standard, exterior, and subdivis lines are run by different surveyors, thus checking the work of another, has resulted in the detection of a few errors in the origi running of certain lines. In all such cases these errors have b corrected by rerunning and remarking the lines thus found to be error.

The work has proceeded more slowly than was anticipated, owing the difficulties met with in the lowlands and river bottoms of Canadian and Arkansas drainage. With the work in those areas it a question of rapidity in the chopping out of undergrowth and timt rather than one of survey, in the strict sense. In the estimate s mitted by the Land Office it was estimated that one-fourth of country was timber and three-fourths open. The actual surveys observations, however, show that the reverse is the case. Considera delay was occasioned also by illness in the camps, due to mala influences.

An examination of the reports of the surveyors thus far recei shows that three-fourths of the country is timbered and that one-th of this is mountainous and broken. This proportion will probabl exceeded rather than reduced in the remaining parts of the Territ

Expenditures.—The total amount expended to March 1, 1896, u this survey, including the purchase of an outfit and instruments, the current expenses of field and office work, amounts to at $147,000. (A few small accounts incurred in February may still outstanding.) Of this sum, $25,000, approximately, has been expen upon a permanent plant in the way of outfit, and $10,000 upon o work, leaving $112,000 as the amout expended directly upon field w The balance remaining of the appropriation, is, therefore, $53,000.

The total amount earned by the surveyors in field work, under rates allowed to contractors by the Department, aggregates $133, The current expenses have been, therefore, $21,000 less thus far t would have been expended under the contract system.

The men employed as surveyors are in every case thoroughly con tent for the work. It is true that in one or two cases mistakes h been made and incompetent men have been employed, but these, aft short trial, have been discharged.

Since this work is not done under contract, but by salaried office the Government, no bonds, other than oaths of office, have been requ from the men engaged in the work.

There is submitted herewith a map of Indian Territory, show progress.

Yours, with respect, CHAS. D. WALCOTT,
Directo

The SECRETARY OF THE INTERIOR.

O

54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 170.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1896.—Referred to the Committee on Forest Reservations and the Protection of Game and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE SECRETARY OF THE INTERIOR, IN RESPONSE TO SENATE RESOLUTION OF FEBRUARY 26, 1896, AS TO WHETHER POACHING IS CARRIED ON TO ANY GREAT EXTENT IN THE YELLOWSTONE NATIONAL PARK.

DEPARTMENT OF THE INTERIOR,
Washington, March 13, 1896.

SIR: I have the honor to acknowledge the receipt of the following resolution of the United States Senate, dated February 26, 1896:

> That the Secretary of the Interior be, and he is hereby, directed to inform the Senate whether or not poaching is carried on to any extent in the Yellowstone National Park; whether animals from said park cross the boundaries thereof into Idaho and Montana and are there slaughtered contrary to existing law; whether the police force guarding said park is sufficient; and to transmit to the Senate all information which he may have in his possession concerning the subject herein inquired about, and to make such recommendation for legislation as in his opinion will tend to the preservation of the animals belonging to the Yellowstone Park.

In response thereto, I transmit herewith copies of the Report of the Secretary of the Interior and of the Acting Superintendent of the Yellowstone National Park for the fiscal year ended June 30, 1895, respectively, in which poaching and the condition of affairs in the Yellowstone National Park generally is discussed, together with a copy of a report made by Capt. George S. Anderson, acting superintendent of the park, under date of the 2d instant, regarding depredations upon the game in the park, etc., and have to state that it is all the information in the possession of the Department concerning the subject of the Senate's inquiry.

With reference to so much of the resolution as requires me to recommend such legislation as in my opinion will tend to the preservation of the animals belonging to the Yellowstone Park, I have to state that existing law—act of May 7, 1894, "To protect the birds and animals in the Yellowstone National Park, and to punish crimes in said park" (28 Stat. L., 73)—is sufficient for such purpose, and no additional legislation by Congress on that subject is necessary. Inasmuch, however, as the Department is handicapped in its enforcement of the law by reason of the lack of sufficient police force to detect and place under arrest those who violate its provisions, it would seem advisable that a material increase be made in the appropriation for the protection and improvement of the Yellowstone National Park during the ensuing fiscal year.

Very respectfully,

HOKE SMITH, Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE SUPERINTENDENT YELLOWSTONE NATIONAL PARK,
Mammoth Hot Springs, Wyo., March 2, 1896.

SIR: I return you herewith the Senate resolution, with the following report:

(1) Poaching is carried on to some extent in the Yellowstone National Park, and it will be impossible to thoroughly prevent it. Most of it is done near the borders by persons who live without the park and operate near the line. Elk, deer, antelope, and most other game are so plentiful that the damage to them is very slight. With the buffalo, however, it is different, and I hear the herd is in danger of extinction. The big price paid for their scalps makes it particularly difficult to keep hunters from pursuing them, to their ultimate extinction. In November last word came to me that a man named Courtenay, from Lake, Idaho, had four heads in his possession and was bringing them to Butte, Mont., for sale. I had him arrested and brought to trial, but he and his friends swore that they were killed in Idaho, outside the park, and he was acquitted.

In January I sent Captain Scott and Lieutenant Lindsley to the Idaho side, with orders to find out all they could about poaching in that region. I inclose a copy of their report, which is very complete.

(2) Animals do cross into Montana and Idaho, and are there killed. In Montana the law properly provides for their protection, but as yet it has not been very actively enforced. I do not think any buffalo now cross into that State. Idaho has a law protecting nearly all kinds of game, but strangely enough the buffalo are not there protected—"by an oversight," as I have been informed. This fatal omission should be promptly remedied, but I believe the Idaho legislature does not meet again for a whole year, and meanwhile the last remnants of the herd is endangered. The other animals are sufficiently protected.

(3) The police force guarding the park is not sufficient. Until August last I had but a single scout besides the soldiers. At that time the Secretary of War authorized me to expend $2,000 of the park appropriaton for its "protection." I at once employed a detective and an assistant, who did good work and brought back valuable information. They were employed about a month. I also employed two scouts for two months, and have continued another on until this time. These were additional to the one that has been continuously in service, and paid from War Department appropriations. I think an allotment of $5,000 per year to be expended by the superintendent of the park for scouts, guides, and detectives, as they might be needed, would result in thorough protection of the remaining game.

Very respectfully,

GEO. S. ANDERSON,
Captain, Sixth Cavalry, Acting Superintendent
Yellowstone National Park.

The SECRETARY OF THE INTERIOR.

FORT YELLOWSTONE, WYO., *February 21, 1896.*

SIR: Regarding the journey made in compliance with instructions contained in Special Orders No. 2, Fort Yellowstone, Wyo., January 20, 1896, I have the honor to report as follows:

We proceeded by rail to Market Lake, Idaho. There we learned that game trophies are occasionally shipped from that station, but always boxed and consigned *as merchandise.*

After investigating matters in that vicinity we proceeded, on January 29, to Rexburg, a distance of 25 miles. The population of this little town is composed almost entirely of Mormons. They are ignorant, lazy, and improvident. We could hear of no hunters, trappers, or probable poachers in the vicinity, and the people knew nothing except of their own small affairs.

On January 30 we went to St. Anthony, the county seat of Fremont County. Our route lay through the little hamlets of Salem, Wilford, and Teton—places of no importance. At St. Anthony we stopped at the Riverside Hotel, kept by Mr. White. The population of St. Anthony is composed largely of Gentiles, the proportion being about three to one. It is the only town in Fremont County that displays any thrift or enterprise.

Mr. White is trying to make his hotel a rendezvous and outfitting point for hunters and sportsmen. He advertises in Forest and Stream. We learn from him that Rice and Findlay, the bankers and leading merchants there, had a buffalo head recently which they tried to sell to him for $50. They are Gentiles who came there about two years ago and have built quite a large business, though we understand they are somewhat involved financially, on account of slow collections. They have the reputation of being "hustlers," and trying to make money in almost any way. We also learned that Mr. Sawtell, of Jacksons Lake, has some money invested in the firm. They have freighted a quantity of goods into Jacksons Hole via Snake River Station, and together with the residents of this part of the country in general are anxious to have the wagon trail from Snake River Station to the edge of the park made into a road.

The next day I drove 13 miles to Burgess's place on left bank of Fall River, 5 miles above its confluence with the North Fork of Snake, and stayed there over night. Returned the next day to St. Anthony. Was unable to get any information whatever from him. He either did not know anything of what is going on in the country, or else did not care to impart any information, probably the latter. He seemed contented and happy in his own surroundings.

Lieutenant Lindsley rode to Beaver Dick's cabin, on Teton River, about 8 miles from St. Anthony. John Brown, ex-private, Troop I, Sixth Cavalry, is wintering with Dick. Do not think they are doing anything this winter and could not get any information of importance from them.

Learned at St. Anthony that George Winegar is son-in-law of Bishop Parker, the ex-Mormon bishop of the Egin Ward. Everyone unites in giving the Winegars a hard reputation, and George in particular, is a drunkard and worthless. They won't pay their debts, are Mormons, and will do nothing except to hunt and trap. They killed some buffalo a year ago last fall, probably two or three. They have a cabin in the Squirrel Creek Meadows, where they go to hunt and trap. They live at Egin.

George Rea and Mr. Bishop, of Island Park, were in St. Anthony last week. Came in on snowshoes and are having a toboggan built there now. Learned from Mr. Bramwell, clerk of the court, and Mr. Cahoon, the probate judge, that Osborn, of Island Park, brought in the two buffalo heads that Rice and Findlay had, and that Osborn is said to have killed eight this fall.

On Sunday, February 2, we met Mr. Hawley, the deputy sheriff and acting game warden. All of the county officials seem much in favor of game protection, and of a law for the preservation of the buffalo in Idaho in particular. The present game law is prohibitory on elk and moose, and several attempts have been made to enforce it, but they have been unable to secure a conviction as yet. Many of the settlers to the north and east of St. Anthony kill elk for their winter's meat, but, except the Winegars, they do no other hunting and no trapping. One of the heads that Rice and Findlay had was a cow. Could not get any description of the other. Broached the subject to Mr. Rice, and he seemed considerably frightened. Denied at first everything, but finally admitted having known the whereabouts of two heads, stating that he had been negotiating for them. Says he got frightened and refused to have anything more to do with them. The impression seems quite generally to prevail that there is some United States law protecting the buffalo. Think Rice and Findlay have the two heads cached somewhere at present.

On the 3d we went 18 miles up the North Fork, to Marysville, where we stayed with Mr. T. Gooch. He is a Mormon, and seems to stand next to the bishop. He is J. P. and P. M.

Marysville is between the North Fork and Falls River. The country is flat, not much higher than the river. No timber and no water as yet. It is essentially a Mormon community of decidedly low type. The country is newly settled, the people very poor, and ignorant and lazy. A Salt Lake company has begun taking out a ditch from Fall River, near the southwest corner of the park. It will be completed in June, and will furnish water to the whole country.

Fred Reising has a homestead about 4 miles south of Marysville, at the Black Spring. He has not been in the country for more than a year. His homestead has been jumped by a Mr. Mitchell, and the *contest* takes place next May. He is generally regarded as *the worst poacher in the vicinity.*

There is a sawmill at the mouth of Warm River, owned and operated by Messrs. Hammond, Cordingly & Hendricks. Warm River empties into the North Fork about 6 miles above here. It is designated on the Land Office map of Idaho as Spring of Mormon Mule Creek. On the 4th we visited this sawmill and met the Cordinglys and Mr. Hammond. Warm River is about twice the size of Nez Perce Creek, is broad and shallow, and never freezes. The most of the water comes from a big spring, said to be 12 miles above the mouth. Heard that an old trapper had built a cabin just below the spring and is up there now, trapping furs. Hear that there are meadows between Warm River and North Fork, and that some moose winter there. Heard of Shepherd's father and three sons, who hunt up toward the park for meat, and sometimes trap some fur. Also of Mr. Shipp, who is an old trapper, but has been prospecting for the last year.

The people are very suspicious of us, and it is hard to get information, and harder still to get reliable information.

On the 5th it snowed hard all day, so we could not get out. The Shepherds are probably up toward the meadows now, but can't find out for certain.

On the 6th Lieutenant Lindsley went to Vaux's cabin and returned the next day. Was driven to sawmill and then up log road for 5 miles. There were 2 feet loose, fresh snow. He left the log road at 1 p. m. and reached the cabin at dark, having made about 6 miles on skees. The cabin is on river bank about one-half mile below the big spring. Vaux served in the Fifteenth United States Infantry during the war. He came here last October from the Big Hole. Is a prospector, and is trying to trap for enough to make a grub stake for next summer. He uses strychnine in addition to his traps. He has killed two moose and two elk this fall and winter. Had moose meat for supper, and he has traded some of the meat with the sawmill men for flour, etc. He says that while fishing in the Fall River meadows late last September, he saw the carcass of a buffalo. The hide had been taken and horns chipped off with an ax.

Dick Rock's cabin and elk corrals are 1 mile northwest of Vaux's cabin, in the meadows, and from them a wagon trail runs to Island Park and Henrys Lake. It is clearly out of the park—probably 8 miles. Vaux says there are six moose near his cabin, but no elk now; thinks the elk come in later, for he sees many shed horns about. The river contains vegetable growth similar to that in Nez Perce Creek and Fire Hole, and Vaux says the moose wade the river and feed on the grass. There is usually a hard crust on the snow in March that sometimes gets strong enough to hold an elk. The snow now is a little more than 6 feet deep at his cabin.

Vaux says he saw trail of eight or ten buffalo last October about 2 miles up the river from his cabin. It led toward the meadows, and had been followed by horse tracks. He thinks it was scouts or soldiers driving them back into the park. Says some of the sawmill men told him so.

There are three brothers, named Bell, logging at the sawmill. One of them has worked for Mr. Waters in the park. They are Gentiles, and seem very energetic, and somewhat inclined to hunt or trap, but could hear of nothing against them.

The Shepherds are now at Reising's cabin, on Porcupine Creek, about 15 miles from here toward the meadows.

On the 8th I met Mr. Samuel Talon, who lives on a ranch at Marysville. He is a Gentile and a volunteer soldier; is a surveyor, and has worked on the Marysville Ditch, also on the Arrange Ditch. He is very bitter against the Mormons, and seems to get on badly with most of his neighbors. He would give any information possible that would injure his enemies, but is apparently too eager to be reliable. He reports that Mr. Osborn, of Island Park, has sold buffalo meat to Mr. Charles Brown, on Fall River; also reports that Larney Brothers had several hundred thousand feet of lumber out on south bank of Fall River last winter, most of which he thinks was cut in the park. Larney Brothers run a sawmill and deal in lumber of all kinds at St. Anthony.

Securing a guide, we started out on February 9 for Reising's old cabin on Porcupine Creek. This cabin was built by him in 1890, and he has occupied it every winter since, until last winter. It is now occupied by hunting parties, who go there for meat. It is probably 4 miles from the west boundary.

Mr. Gooch hauled us in a sleigh 5 miles, whence we proceeded on snowshoes and reached the cabin at dark. The snow increased rapidly in depth, and the skees sank deeper at every step. Found the head and front quarters of a bull elk near trail, about 2 miles before we reached the cabin. Found Mr. Shepherd and his son camped at cabin. They had dog and toboggan. Said the boy killed the elk and had taken the hind quarters home. Had some of the meat in camp and was going to haul the rest home. The old man is not very strong. Says he is trying to get some fur, but has had no success as yet. Young Green has been with them, and is expected up to-morrow with another dog and sled. Hear that they have two more elks somewhere, but they say nothing about it. It snowed all day, but was not cold.

On the 10th we stayed at the cabin and Shepherd volunteered to guide us to top of divide, toward Snake River Station.

On the 11th we started for a cabin 16 miles farther on and near Bechler River. Reached crossing of Rock Creek and were all played out. Had to camp in the open air and melt snow for water. Cut wood all night with hatchet to keep warm. The snow here is 7 feet deep, very soft on top, and it snowed all day. The skees sink a foot and a half, which makes traveling very laborious. The blazes on trees are nearly all covered with snow, and Shepherd was unable to follow the trail closely. Saw no signs of game, the recent snow having covered up any trails that may have been made before.

On the 12th we left camp at daylight. Reached tree where park regulations are posted at 11 o'clock. Shepherd said the cabin, which is a secret one built by Winegar some years since, was only one-half mile away. He started for it and came out at Bechler River. Was very much surprised at not being able to find it. The air was full of snow. Circled back and found it at 3 p. m. on bank of a little lake and about half a mile from park regulations. It is much dilapidated. Had hole in middle of the roof to let smoke out, and there was considerable snow inside. Shepherd's son and young Green were with us, besides the guide employed at Marysville, and they had two dogs and toboggans. We camped in cabin, and at bedtime it was still snowing hard. Shepherd refused to guide us any farther; said he wouldn't undertake to guide us anywhere in such a storm, as it was impossible.

The morning of the 13th it was still snowing. The guide and the young men were played out and sick. The dogs were tired and footsore, and we found we had only one day's rations left. The Snake River Station was still 25 miles distant, and two rivers to wade before reaching it. It was clearly impracticable to proceed farther, so we returned that day to Reising's cabin over the trail we had broken, and where Shepherd had some rations left. The next morning we had nothing but a small quantity of bread and some tea for breakfast, and that night we reached Marysville. During our absence the weather had been fine at Marysville, and the snow was crusted after we left the timber.

From Marysville we returned as rapidly as possible to Market Lake, and came home by railroad, reaching the post on the 18th.

On the train coming home saw a traveling man who saw Snyder at Park City, Utah, last spring, peddling jerked meat and salt fish. He also had a head and skin of a young bull, which he was trying to sell for $50.

We heard from many different sources that buffalo have wintered in the meadows heretofore, and also about the warm formation on Mountain Ash Creek. Fresh signs were seen in that vicinity late last fall, and it seems very probable that a small band is wintering there now, unless they have all been killed.

It is equally certain that the poachers from Henrys Lake and Island Park come into the country adjacent every spring as soon as the snow crusts, so they can travel with their dog teams. We believe that the remnant of the band will be destroyed before spring unless extraordinary measures are taken for their preservation.

There are two cabins in the meadows on Bechler River and one on Mountain Ash Creek, and I recommend that these, together with the secret cabin where we camped and the old Reising cabin, be destroyed.

Very respectfully,

G. L. SCOTT,
Captain, Sixth Cavalry.

Capt. GEO. S. ANDERSON,
Sixth Cavalry, Superintendent Yellowstone National Park.

[Extract from report of Secretary of the Interior, 1895.]

All the game continues to increase and prosper except the bison, or buffalo. They are constantly hunted and pursued by head and skin hunters from the vicinity of Henrys Lake, in Idaho, and are in danger of extinction. The small remaining herd, of probably 200 in number, summers near the Idaho line. The laws of that State are extremely deficient in measures for preserving the game, and it has been necessary to devote a part of the appropriation for park protection to the detection of the vandals who slaughter it. The park act can afford no protection to the buffalo after they cross its boundary. The only herd of wild bison, or buffalo, now existing in the United States is on the boarder of this State, liable at any time to pass within its dominion, and every influence should, therefore, be brought to bear to induce the Idaho authorities to enact laws necessary for its protection.

[Extract from report of acting superintendent of Yellowstone National Park, 1895.]]

POACHING.

The act of May 7, 1894, seems to have had a most healthy effect upon the poachers who surround and prey upon the park. *I believe* that those of the north, the east, and the south sides *have nearly or quite ceased troubling* it. I can not say as much as

this for the Idaho border. There is a section of country, beginning at Henrys Lake and extending south for about 25 miles, inhabited by a merciless and persistent lot of head and skin hunters. In most civilized countries the occupation of such vandals as these is held in merited contempt, but it is not so in the region of which I have made mention. The laws of Idaho are extremely deficient in game protective measures. I believe it is a fact that the bison, now so nearly extinct, is not protected at all. So long as the only herd of wild bison now existing in the United States is on the border of this State, liable at any time to cross within its dominion, it would seem that the State would pass the laws necessary to protect them with the most vigorous of punishments. Extended inquiry into various rumors of the killing of bison, either in the park near the Idaho line or across it within that State, has convinced me that this last remaining herd is in danger of extinction by these people of whom I have made mention.

I have good evidence of the killing of at least ten less than two years ago near the State line, but probably outside the park. This was prior to the passage of the protection act, which has nearly put an end to depredations within the park. I have undoubted evidence of the capture of three calves this spring by a resident of Henrys Lake. He claims that this capture was made outside the park. There are rumors of a herd of nearly one hundred having been seen in Idaho outside the park within the last two or three months. The park act can afford no protection to these animals after they cross its boundary. I trust every influence will be brought to bear to induce the Idaho authorities to pass a protective law, and to this end I will exert my best endeavor.

A single conviction of a poacher under the law of May 7, 1894, will act as a powerful deterrent on these criminals, and I have no doubt will go far toward settling the question of incursions by depredators for all time.

The only other way in which the park is liable to be troubled by poachers is in the capture of the fur-bearing animals. It is so easy to place poison or set traps where the eye of the most expert scout can not find them; it is so easy to pack the pelts out of the park without detection, that it has seemed to me one of the most difficult problems that I have been called upon to handle. Of course the constant system of patrols has done much to enforce the law and the regulations on this subject, and I am pleased to state that the effect has been the best. Evidences multiply on all hands of the constant increase of all of these animals. Four years ago I considered the extinction of the beaver imminent. I now find them multiplied many fold in all of the suitable streams in the park. Of course some of them fall a victim to the trappers who hang around the borders, but the large central area of the park is as thoroughly protected as though poachers were nonexistent.

The few elk, deer, antelope, bear, etc., that may fall victims to the hunter's rifle within the park limits will not in any material sense diminish their numbers, and except as a matter of example, it would not be worth the trouble of pursuing the poacher who confines his depredations to this kind of game.

GAME.

Last winter there was less snow than ever before known within the park. It was possible for the larger game, such as bison and elk, to pass at will over most parts of it during the entire winter. For that reason, perhaps, the bison that have heretofore wintered in the Hayden Valley were not massed there this year. The most seen there in a single bunch at any one time was about thirty. Small herds of from three or four to ten were seen in widely separated localities where they have not usually wintered. I feel sure that many of them did not leave their summer range along the Idaho line. How many of them may have been killed or captured I can not determine, but I fear that their number has not increased, although I am still disposed to adhere to my estimate of last year that two hundred still remain. There has been placed at my disposal by Professor Langley, of the Smithsonian Institution, $3,000 with which to build an inclosure and provide food for so many as can be driven within it during the coming winter. If this plan should succeed we will be able to retain a small herd and keep them nearly in a state of nature. I hope to have this inclosure built by the middle of September.

On account of the mildness of the winter and the early disappearance of the snow it was a particularly favorable season for the rearing of young, and all of the wild animals seen this spring are accompanied by an exceptional number of vigorous and healthy offspring.

From reports received from the station on Snake River, it seems that the moose in that region are rapidly increasing. I have no doubt they are thoroughly protected, and in time will form an important element among the game preserved within the park.

Of the mountain sheep I have nothing new to report. Their summer habitat is not within my observation, but the usual herds wintered on Mount Everts and were seen almost daily by travelers on the road between here and Gardiner.

The elk have quite held their own or increased in numbers, and have been seen almost daily by tourists up to the present date. They exist within the park in such great numbers that the question of their preservation is not one that causes any concern. A succession of open winters like the last would possibly make them more numerous than the food supply could well support. That they breed and winter within the park and wander outside of it to furnish sport for hunters is not an evil, and is perhaps one of the very excuses for game protection within its limits.

The antelope have increased very materially. Certainly eight hundred of them wintered on the flat this side of the town of Gardiner, where this most shy of all wild animals became nearly as tame as domestic cattle.

The deer seem to have increased more rapidly than any other variety of game. I have seen within the last twelve months double the number that I have ever before seen in a similar period. During the winter and the early spring they wander unterrified over the grassy slopes at this point and pass within a few feet of the houses and barracks, exposed to the gaze of the officers and soldiers, without exhibiting the slighest fear.

Bear are as plentiful and as tame as ever, visiting most of the hotels nightly, where they are a source of amusement and entertainment to the tourists. Although they have increased notably, I do not think it is desirable to diminish their numbers. They are not dangerous to human life, and the park can well spare whatever of the other game they may consume for their sustenance.

The only contributions made to the National Zoological Park, at Washington, last year were ten beaver, a few of the smaller animals, and some birds. This was, of course, largely due to the fact that I was uncertain as to whether I would be permitted under the new law to capture and ship them. An affirmative decision on this point came too late in the season to be of any value, for the young were then too large to be captured. I am arranging to make some captures for shipment this autumn.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 171.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1896.—Referred to the Committee on Interstate Commerce and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE INTERSTATE COMMERCE COMMISSION, IN RESPONSE TO SENATE RESOLUTION OF FEBRUARY 13, 1896, TRANSMITTING INFORMATION RESPECTING CERTAIN RAILROAD COMPANIES, THEIR CUSTOMS, RULES, REGULATIONS, AGREEMENTS, AND CHARGES, AND THE REASONABLENESS AND LEGALITY THEREOF.

INTERSTATE COMMERCE COMMISSION,
Washington, March 12, 1896.

The PRESIDENT OF THE SENATE:

Complying with the resolutions of the Senate, the Interstate Commerce Commission transmits the information respecting certain railroad companies, their customs, rules, regulations, agreements, and charges, and the reasonableness and legality thereof. The resolutions of the Senate are as follows:

IN THE SENATE OF THE UNITED STATES,
February 13, 1896.

Resolved, That the Interstate Commerce Commission be, and it is hereby, directed to inform the Senate—

First. Whether there has been a custom, rule, regulation, or agreement a long time existing among railway companies and associations engaged in interstate traffic whose lines extend to or through Missouri River points, which custom, rule, regulation, or agreement established and maintains different rates of charges for carrying passengers and freight east and west from said points, and whether such difference in charges is reasonable and warranted by law.

Second. Whether such agreement affects alike companies running through lines to and beyond said Missouri River points as well as companies whose lines terminate there, giving the names of roads engaged in interstate traffic to and through such places.

Third. Whether an agreement or traffic arrangement was recently made or entered into by and between any railway companies or associations, naming them, whereby charges for carrying grain and other farm products from points in Missouri, Kansas, Nebraska, Colorado, Oklahoma, and Indian Territory to points in Texas and Mexico were advanced; whether such advanced charges are now in force; what was the reason or purpose of the advance, and whether it is reasonable or unreasonable and in violation of the provisions of the interstate-commerce law.

Fourth. Whether, in case these agreements have been made and these proceedings had, there is, in the opinion of the Commission, any additional legislation required to better protect the public interests.

Attest:

WM. R. COX, *Secretary.*

Replying to these resolutions in their order, as above:

First. There is no agreement or regulation in writing, other than the regularly established tariffs and rate sheets, between the railroad companies whose lines *extend to or through* Missouri River points as to

what rates shall be maintained to or from such points. Companies carrying from points east thereof use the Missouri River as a basing line, and maintain the same rate to all Missouri River points. The rates now in force to Missouri River points appear in Table 1. The practice of so using the Missouri River as a basing point began about 1876, when the companies carrying east of that river had no lines or tracks west thereof. The practice or custom is still in existence, and unquestionably has the approval of the railroad companies participating therein and the railroad associations to which such companies belong.

The rates from Chicago and points east of the Missouri River to points west in the States of Nebraska, Kansas, and Colorado are made, as a rule, by a combination of the rates east and west of the river—that is to say, by adding to the rate east of the river the local rate between the river and the point of destination west. For illustration, the first-class rate from Chicago to Omaha is 80 cents; the local rate thence to Columbus, Nebr., is 35 cents; the combination or through rate being $1.15. The rate from Chicago to Kansas City on freight of the first class is 80 cents, and the local rate thence to Topeka, Kans., is 29 cents, making the aggregate of the through rate, under this rule of constructing rates, $1.09.

To this rule of constructing rates to points west of the river by a combination of rates to and from the river there are exceptions. The first-class rate from Chicago to Omaha (Missouri River) is 80 cents; the local rate thence to Lincoln, Nebr., is 30 cents; the aggregate of this combination of rates would be $1.10, but a through rate of 85 cents on freight of the first class is made to Lincoln. The first-class rate from Chicago to Kansas City is 80 cents; the rate thence to Ottawa, Kans., is 29 cents; these combined would make the aggregate or through rate $1.09, but the through rate maintained is $1.05.

In proportion to distances the rates and charges are higher west than east of the Missouri River. For illustration, the rate from Chicago, through Omaha, to Julesburg on first-class freight is $1.80, the division being 80 cents to Omaha, for a distance of 492 miles, and $1 west of Omaha, for a distance of 372 miles. The rate from Chicago, through Kansas City, to Dodge City, Kans., is $1.67, the division being 80 cents from Chicago to Kansas City, for a distance of 458 miles, and 87 cents from Kansas City to Dodge City, a distance of 369 miles.

Tables 1, 2, and 3 show the rates of transportation now in force between Chicago and Missouri River points; between Chicago and points in Nebraska, Kansas, and Colorado, and between the Missouri River and points west thereof in Nebraska, Kansas, and Colorado; with distances, division of rate, and average rate per ton per mile east and west of the river.

Tables 4 and 5 afford like information respecting rates between Denver and Colorado points and Chicago, Mississippi River and Missouri River points.

Table 6 shows present rates, aggregate and per ton per mile, between San Francisco, Cal., and Missouri River points, Mississippi River points, Chicago, Ill., and Pittsburg, Pa.

"Whether such difference in charges" (east and west of Missouri River points) "is reasonable and warranted by law" is involved in several complaints pending and under investigation by the Commission. The carriers claim that rates, some higher west than east of the Missouri River, are reasonable and justifiable because, as they allege, less dense population, lighter traffic, and other conditions west of the river make *the transportation* more expensive.

In this connection it may be proper to refer to the fact that the State of Nebraska recently sought to establish lower rates of transportation in that State including those from Missouri River to interior points, and that the effort or proceeding to so reduce the Nebraska rates was enjoined by the United States circuit court. In view of this fact it may be assumed that any reduction of rates from points without to points in that State, which might be ordered by this Commission, on the basis of Nebraska rates being excessive, might fail to receive that favorable consideration of the same court which is necessary to make any such order of the Commission effective.

As already shown, rates to Kansas from points east of the river are constructed, as are those from points east of the river to Nebraska.

Beside several proceedings pending before the Commission involving the lawfulness of the rates and charges to which the resolution of the Senate relates, the Commission has caused to be instituted a case in the Federal court in the State of Kansas to test the reasonableness and legality of some of the rates maintained to and from points in that State, and has employed additional counsel to aid the United States attorney in the prosecution.

Second. The custom or practice of using the river as a basing point in constructing rates between points east and west of the Missouri River points, affects alike, and rates are made in the same way by companies running through lines across the river and those terminating at the river but carrying between points on either side thereof in connection with other lines.

The "companies running through lines to and beyond Missouri River points" are the Chicago, Rock Island and Pacific Railway, the Atchison, Topeka and Santa Fe Railroad, and the Chicago, Burlington and Quincy Railroad, or "the Burlington System," though other companies, with lines extending from points east thereof to the Missouri River, have connections west with lines in which they have a proprietary interest.

The lines extending to the Missouri River on the east are the Chicago and Northwestern Railway, the Chicago, Milwaukee and St. Paul Railway, the Chicago Great Western Railway, the Illinois Central Railroad, the Sioux City and Northern Railroad, the Chicago and Alton Railroad, the Wabash Railroad, and the roads of "the Burlington System."

The lines extending to the Missouri River from the west, other than through lines, are the Union Pacific Railway, the Fremont, Elkhorn and Missouri Valley Railroad, the St. Joseph and Grand Island Railroad, and the Kansas City Northwestern Railroad.

Third. On the 3d day of October, 1895, the rates on flour and grain previously in force from certain points in Missouri, Kansas, and Oklahoma and Indian Territories, to Galveston and other points in Texas, including points on the Rio Grande (the Mexican border), were reduced. The points from which the rates were so reduced embrace most of the south half of all the grain-producing region of the State of Kansas, the southwestern, nearly one-half, of the State of Missouri, and parts of Oklahoma and Indian Territories. On the said 3d day of October, 1895, the rates on flour and grain to the Texas points above named, from the north half, approximately, of the grain-producing part of the State of Kansas, from parts of Colorado, Nebraska, northeastern half of Missouri, and parts of Oklahoma were increased.

On the 20th of January last all the above-mentioned rates, which had been either so increased or reduced, were restored and made the same as they were *before October 3, 1895.* The result of this restora-

tion on the 20th of January was to considerably increase the rates on flour and grain from parts of the grain-producing region of Kansas, Missouri, Indian Territory, and Oklahoma, as compared with the rates reduced and in force after October 3, 1895.

Tables 7 to 12, inclusive, show the changes, reductions, and increases so made to Galveston and other Texas common points. Tables 13 and 14 show the rates to the Mexican border line, through rates to points in Mexico being made up by combination, or adding together the rates to and from Eagle Pass, Laredo, and El Paso, on the Mexican border. These tables, 7 to 14, inclusive, do not show all the points from which rates to Texas points were changed on October 3, 1895, and January 20, 1896, but they present a few important points in each group.

The reductions made on October 3, 1895, were made by the several roads carrying to the Mexican border, and to Galveston and other Gulf ports. Previous to this reduction flour and grain rates from points in Missouri, Kansas, Nebraska, Colorado, and Oklahoma and Indian Territories were so adjusted that part of these products was carried east through St. Louis, Chicago, and the several Missouri and Mississippi crossings, another part going south to the Mexican border and to the Gulf ports over the roads leading thereto.

The result of the reductions and changes so made in rates on October 3, 1895, was to divert to the Gulf ports a considerable part of the traffic in flour and grain from the reduced-rate territory, which had been previously carried east to St. Louis and Chicago, and through these and other points to the Atlantic Seaboard.

The companies carrying to the east complained of their rivals and threatened retaliation. This resulted in a conference in which the companies competing for this traffic were represented, and an arrangement was arrived at as the result of which the rates on flour and grain which had existed previous to October 3, 1895, were restored on January 20, 1896. The "reason or purpose of the advance" so made on January 20, 1896, tried by its effect, was to restore former conditions, so that more grain might be carried over eastern and less over lines to Gulf ports.

The restoration was understood to be but temporary, the restored rates being unsatisfactory to many of the railroad companies interested. It was agreed by the railroad companies interested therein to submit to arbitration the settlement or determination of what the relative rate should be on flour and grain products from the States and Territories mentioned to the Gulf ports and to St. Louis and Chicago, and points east. The adjustment of these rates was so submitted and, as we are advised, is under arbitration.

The railway companies competing for the traffic in question are members of the Southwestern Traffic Association, or of the Western Freight Association, or are represented in the Trans-Missouri Freight-Rate Committee. The conference and arrangements, as the result of which the rates were so restored on January 20, 1896, and submitted to arbitration, were partly effected by said railroads through said railway associations and freight-rate committee. The companies carrying to the Gulf ports and Mexican border compose the Southwestern Traffic Association. Carriers of Atlantic seaboard freight from trans-Missouri territory belong to the Western Freight Association, and some, who, in connection with other companies, are carriers both to the Gulf and to the eastern seaboard, are represented in the Trans-Missouri Freight-Rate Committee.

Whether rates so advanced on January 20, 1896, and which are now

in force, are "reasonable or unreasonable and in violation of the provisions of the interstate-commerce law" is involved in the several proceedings pending before the Commission and undetermined. The railway associations, through which the several companies effected the changes of rates so made on October 3, 1895, and January 20, 1896, are similar in their organization and purposes to other railroad associations in different sections of the country. Three several proceedings are now pending in the United States courts, instituted by the Commission or upon its request, to test the legality of such associations, their actions and doings. Still another proceeding, not begun at the instance of this Commission, is now pending before the United States Supreme Court, involving the validity of another such association under the antitrust act.

Fourth. "In the opinion of the Commission" there is "additional legislation required to better protect the public interests." The Commission has annually during all the years of its existence recommended such legislation. Any evils resulting from the use of the Missouri River as a basing line will be remedied by so amending the act to regulate commerce as to provide for through routing and through billing from the point of shipment to the point of destination at through rates. This Commission has recommended such an amendment to the United States Senate and House of Representatives in its annual reports for eight successive years.

In 1891, and in its annual report for each succeeding year, this Commission has recommended to and asked the Senate and House of Representatives for additional legislation or amendment which will compel carriers complained of to disclose their defense to the Commission, and confine the courts, in proceedings to enforce the Commission's orders, to the consideration of the record made and case tried before the Commission. Such an amendment is necessary to the enforcement of any orders made by the Commission.

Though these recommendations have been made to Congress year after year, they have not received the favorable or mindful consideration of the legislative department of the Government. Beside these, the other amendments recommended to Congress year after year by the Commission are deemed essential to the effectual enforcement of the act in accordance with its spirit, intent, and purpose.

All of which is respectfully submitted.

Respectfully, W. R. MORRISON,
Chairman.

TABLE NO. 1.—*Statement showing classified freight rates between Chicago, Ill., and Missouri River points, also distances and average rate per ton per mile.*

[Rates in cents per 100 pounds governed by Western classification.]

Miles from Chicago, Ill.	To—	1	2	3	4	5	A	B	C	D	E	Average rate per ton per mile.
510	Sioux City, Iowa	80	65	45	32	27	32	27	22	18½	16	0.0143
490	Omaha, Nebr.	80	65	45	32	27	32	27	22	18½	16	.0149
487	Council Bluffs, Iowa	80	65	45	32	27	32	27	22	18½	16	.015
470	St. Joseph, Mo	80	65	45	32	27	32	27	22	18½	16	.0155
490	Atchison, Kans	80	65	45	32	27	32	27	22	18½	16	.0149
485	Leavenworth, Kans	80	65	45	32	27	32	27	22	18½	16	.015
458	Kansas City, Mo	80	65	45	32	27	32	27	22	18½	16	.0159

TABLE NO. 1.—*Statement showing classified freight rates, etc.*—Continued.

SPECIAL COMMODITY RATES ON FLOUR AND GRAIN, IN CENTS PER 100 POUNDS.

From—	Flour.	Wheat.	Corn.
Missouri River points to Chicago	24	24	20

SPECIAL COMMODITY RATES ON COAL, IN CENTS PER 100 POUNDS.

From Chicago to Missouri River points 15

TABLE NO. 2.—*Statement showing published through rates between Chicago and certain points in Nebraska and Colorado; also between Chicago and Omaha and between Omaha and points in Nebraska and Colorado; also distances and average rate per ton per mile for each.*

[Rates in cents per 100 pounds.]

Miles.	To—	1	2	3	4	5	A	B	C	D	E	Average rate per ton per mile.
	Fremont, Nebr.											
538	Through published rates	85	70	49	36	30	35	30	25	21½	19	0.015
	Combination:											
492	From Chicago to Omaha	80	65	45	32	27	32	27	22	18½	16	.015
46	West of Omaha	28	25	20	15	12	12	10	8	6	4	.061
		108	90	65	47	39	44	37	30	24½	20	.....
	Columbus, Nebr.											
583	Through published rates	115	95	72	53	43	46	40	33	26½	21½	.019
	Combination:											
492	From Chicago to Omaha	80	65	45	32	27	32	27	22	18½	16	.015
91	West of Omaha	35	30	27	21	16	14	13	12	8	5½	.04
		115	95	72	53	43	46	40	34	26½	21½	.....
	Lincoln, Nebr.											
584	Through published rates	85	70	49	36	30	35	30	25	21½	19	.014
	Combination:											
492	From Chicago to Omaha	80	65	45	32	27	32	27	22	18½	16	.015
92	West of Omaha	30	25	20	15	12	12	10	8	7	5	.031
		110	90	65	47	39	44	37	30	25½	21	.....
	Grand Island, Nebr.											
645	Through published rates	131	110½	83	62	53	57	45	37½	29½	23½	.02
	Combination:											
492	From Chicago to Omaha	80	65	45	32	27	32	27	22	18½	16	.015
153	West of Omaha	51	45½	38	30	26	25	18	15½	11	7½	.035
		131	110½	83	62	53	57	45	37½	29½	23½	.....
	Kearney, Nebr.											
688	Through published rates	140	121	92	72	61	59½	46½	40	31½	25	.02
	Combination:											
492	From Chicago to Omaha	80	65	45	32	27	32	27	22	18½	16	.015
196	West of Omaha	60	56	47	40	34	27½	19½	18	13	9	.033
		140	121	92	72	61	59½	46½	40	31½	25	.....
	Lexington, Nebr.											
623	Through published rates	151	128	103	80	69	65	54	44	34½	27½	.024
	Combination:											
492	From Chicago to Omaha	80	65	45	32	27	32	27	22	18½	16	.015
231	West of Omaha	71	63	58	48	42	33	27	22	16	11½	.034
		151	128	103	80	69	65	54	44	34½	27½	.....

TABLE NO. 2.—*Statement showing published through rates, etc.*—Continued.

Miles.	To—	1	2	3	4	5	A	B	C	D	E	Average rate per ton per mile.
	North Platte, Nebr.											
783	Through published rates	158	136	110	87	76	71	60	49	39½	31	0.021
	Combination:											
492	From Chicago to Omaha	80	65	45	32	27	32	27	22	18½	16	.015
291	West of Omaha	78	71	65	55	49	39	33	27	21	15	.031
		158	136	110	87	76	71	60	49	39½	31	.....
	Julesburg, Colo.											
864	Through published rates	180	156	125	97	77	91	71	57	46½	35	.022
	Combination:											
492	From Chicago to Omaha	80	65	45	32	27	32	27	22	18½	16	.015
372	West of Omaha	100	91	80	65	50	59	44	35	28	19	.031
		180	156	125	97	77	91	71	57	46½	35	.....
	Sterling, Colo.											
924	Through published rates	205	165	125	97	77	92	72	62	53½	46	.021
	Combination:											
492	From Chicago to Omaha	80	65	45	32	27	32	27	22	18½	16	.015
432	West of Omaha	125	100	80	65	50	60	45	40	35	30	.029
		205	165	125	97	77	92	72	62	53½	46	.....
	Rates between St. Louis and the above points are made by deducting from the above rates	20	20	10	5	5	7½	7½	5	5	5	.....

No division of the above through rates has been filed with the Commission.

TABLE NO. 3.—*Statement showing published through rates between Chicago and certain points in Kansas and Colorado; also between Chicago and Kansas City and between Kansas City and same points in Kansas and Colorado; also distances and average rates per ton per mile for each; also per cent showing division of rate east and west of Missouri River and average rate per ton per mile east and west thereof.*

[Rates in cents per 100 pounds.]

Miles.	To—	1	2	3	4	5	A	B	C	D	E	Average rate per ton per mile.	Division of through rates east and west of Missouri River.		Average rate per ton per mile east and west of Missouri River.	
													East.	West.	East.	West.
	Topeka, Kans.												*P ct*	*P ct*		
525	Through published rates	109	89	64	47	30	44	37	30	25½	21½	0.019	70	30	0.0154	0.0454
	Combination:															
458	From Chicago to Kansas City	80	65	45	32	27	32	27	22	18½	16	.016	....	....	.....	.....
67	West of Kansas City	29	24	19	15	12	12	10	8	7	5½	.042	....	....	.....	.....
		109	89	64	47	30	44	37	30	25½	21½	.....	....	....	.....	.....

TABLE NO. 3.—*Statement showing published through rates, etc.*—Continued.

Miles.	To—	1	2	3	4	5	A	B	C	D	E	Average rate per ton per mile.	Division of through rates east and west of Missouri River.		Average rate per ton per mile east and west of Missouri River.	
													East.	West.	East.	West.
	Ottawa, Kans.												*P ct*	*P ct*		
516	Through published rates	105	86	62	45	37½	42	35¼	26⅛	23	20	.018	70	30	0.014	0.0479
	Combination:															
458	From Chicago to Kansas City	80	65	45	32	27	32	27	22	18½	16	.016	....	....	.....	.....
58	West of Kansas City	29	24	19	15	12	12	10	8	7	5½	.049	....	....	.....	.....
		109	89	64	47	39	34	37	30	25½	21½	.....	....	....	.....	.....
	Lawrence, Kans.															
499	Through published rates	102	84	60	45	34	41	35	29	24½	20½	.019	70	30	.0145	.0698
	Combination:															
458	From Chicago to Kansas City	80	65	45	32	27	32	27	22	18½	16	.016	....	....	.....	.....
41	West of Kansas City	25	20	15	13	7	9	8	7	5	5	.056	....	....	.....	.....
		105	85	60	45	34	41	35	29	23½	21	.....	....	....	.....	.....
	Emporia, Kans.															
586	Through published rates	121	105	80	59	51	53½	44½	35	29	23	.021	.56	.44	.0147	.0416
	Combination:															
458	From Chicago to Kansas City	80	65	45	32	27	32	27	22	18½	16	.016	....	....	.....	.....
128	West of Kansas City	49	40	35	28	24	23	18	13	11	7½	.039	....	....	.....	.....
		121	105	80	60	51	55	45	35	29½	23½	.....	....	....	.....	.....
	Cherry Vale, Kans.															
614	Through published rates	119	101	77½	56½	47½	52	43	31	26	23	.019	.56	.44	.014	.0324
	Combination:															
458	From Chicago to Kansas City	80	65	45	32	27	32	27	22	18½	16	.016	....	....	.....	.....
156	West of Kansas City	50	45	40	30	25	25	20	12	10	9	.034	....	....	.....	.....
		130	110	85	62	52	57	47	34	28½	25	.....	....	....	.....	.....
	Halstead, Kans.															
668	Through published rates	139½	118	91	69	58	61½	49	40	32½	26½	.021	46	54	.0137	.0352
	Combination:															
458	Chicago to Kansas City	80	65	45	32	27	32	27	22	18½	16	.016	....	....	.....	.....
210	West of Kansas City	60	53	46	37	31	30	22	18	14	10½	.031	....	....	.....	.....
		140	118	91	69	58	62	49	40	32½	26½	.....	....	....	.....	.....
	Abilene, Kans.															
668	Through published rates	131	110½	83	62	53	57	45	37½	29½	23½	.019	52	48	.0143	.0288
	Combination:															
458	From Chicago to Kansas City	80	65	45	32	27	32	27	22	18½	16	.016	....	....	.....	.....
210	West of Kansas City	51	45½	38	30	26	25	18	15½	11	7½	.026	....	....	.....	.....
		131	110½	83	62	53	57	45	37½	29½	23½	.....	....	....	.....	.....

TABLE NO. 3.—*Statement showing published through rates, etc.*—Continued.

Miles.	To—	1	2	3	4	5	A	B	C	D	E	Average rate per ton per mile.	Division of through rates east and west of Missouri River. East.	Division of through rates east and west of Missouri River. West.	Average rate per ton per mile east and west of Missouri River. East.	Average rate per ton per mile east and west of Missouri River. West.
	Wichita, Kans.												*P ct*	*P ct*		
686	Through published rates	139½	118	91	69½	60	61½	49	40	33	27	.02	46	54	0.0138	0.0326
	Combination:															
458	From Chicago to Kansas City	80	65	45	32	27	32	27	22	18½	16	.016	....	....	.....	.....
228	West of Kansas City	66	58	50	41	36	32½	24	20	16	12	.031	....	....	.....	.....
		146	123	95	73	63	64½	51	42	34½	28	.....	....	....	.....	.....
	Hutchinson, Kans.															
693	Through published rates	139½	118	91	69½	60	61½	49	40	33	27	.02	46	54	.0138	.0316
	Combination:															
458	From Chicago to Kansas City	80	65	45	32	27	32	27	22	18½	16	.016	....	....	.....	.....
235	West of Kansas City	66	58	50	41	36	32½	24	20	16	12	.03	....	....	.....	.....
		146	123	95	73	63	64½	51	42	34½	28	.....	....	....	.....	.....
	Winfield, Kans.															
705	Through published rates	142½	120½	93½	72½	62	63½	50	41	34	27½	.02	46	54	.0142	.0309
	Combination:															
458	From Chicago to Kansas City	80	65	45	32	27	32	27	22	18½	16	.016	....	....	.....	.....
247	West of Kansas City	73	63	55	47	40	36½	25	21	17	12½	.032	....	....	.....	.....
		153	128	100	79	67	68½	52	43	25½	28½	.....	....	....	.....	.....
	Dodge City, Kans.															
827	Through published rates	167	143	116	92	81	78	59	49	41	34	.021	41	59	.0154	.0271
	Combination:															
458	Chicago to Kansas City	80	65	45	32	27	32	27	22	18½	16	.016	....	....	.....	.....
369	West of Kansas City	87	78	71	60	54	46	32	27	23	18	.027	....	....	.....	.....
		167	143	116	92	81	78	59	49	41½	34	.....	....	....	.....	.....
	La Junta, Colo.															
1,029	Through published rates	220	185	145	112	92	107	82	67	58½	50	.022	33½	66½	.0163	.0260
	Combination:															
458	From Chicago to Kansas City	80	65	45	32	27	32	27	22	18½	16	.016	....	....	.....	.....
871	West of Kansas City	160	130	110	90	75	85	65	55	45	34	.03	....	....	.....	.....
		240	195	155	122	102	117	92	77	63½	50	.....	....	....	.....	.....
	Rates between St. Louis and the above points are made by deducting from the above rates	*20*	*20*	*10*	*5*	*5*	7½	7½	5	5	5	.....	....	....	.....	.....

TABLE NO. 4.—*Statement showing present freight rates charged on classified service between Colorado common points (Denver) and Chicago, Ill., Mississippi River (St. Louis), and Missouri River (Kansas City); also rate per ton per mile.*

[Rates in cents per 100 pounds. Governed by Western classification.]

Miles.	To—	1	2	3	4	5	A	B	C	D	E
	Chicago, Ill.										
1,020	Through rate.....	205	165	125	97	77	92	72	62	53½	46
	Rate per ton per mile	0.04	0.03	0.024	0.019	0.015	0.018	0.014	0.012	0.01	0.009
	Mississippi River (St. Louis).										
922	Through rate.....	185	145	115	92	72	84½	64½	57	48½	41
	Rate per ton per mile	0.042	0.032	0.025	0.02	0.016	0.018	0.014	0.012	0.01	0.009
	Missouri River (Kansas City).										
639	Through rate.....	125	100	80	65	50	60	45	40	35	30
	Rate per ton per mile	0.04	0.031	0.025	0.02	0.016	0.019	0.014	0.0125	0.01	0.0096

TABLE NO. 5.—*Statement showing present freight rates charged on classified service between Missouri River points and Denver, Colo., and between Chicago, Ill., and Missouri River points; also rate per ton per mile.*

[Rates in cents per 100 pounds. Governed by Western classification.]

Miles.		1	2	3	4	5	A	B	C	D	E
	Between Kansas City, Omaha, and other Missouri River points and Denver, Colo.										
639a	Through rate	125	100	80	65	50	60	45	40	35	30
	Rate per ton per mile	0.039	0.031	0.025	0.0203	0.0157	0.019	0.014	0.0125	0.0109	0.0096
	Between Chicago, Ill., and Omaha, Kansas City, and other Missouri River points.										
490b	Through rate	80	65	45	32	27	32	27	22	18½	16
	Rate per ton per mile	0.0327	0.0265	0.0186	0.013	0.011	0.013	0.011	0.009	0.0076	0.0065

a Distance to Kansas City. b Distance to Omaha.

TABLE NO. 6.—*Statement showing present freight rates charged on classified service between San Francisco, Cal., and points as shown below; also rates per ton per mile.*

[Rates in cents per 100 pounds. Governed by Western classification.]

Miles.		1	2	3	4	5	A	B	C	D	E
	From San Francisco, Cal., to Missouri River (Omaha).										
1,929	Through rates	300	260	220	180	160	160	140	110	95	85
	Rate per ton per mile	0.031	0.027	0.023	0.019	0.017	0.017	0.015	0.011	0.0098	0.0089
	From San Francisco, Cal., to Mississippi River (Savanna).										
2,280	Through rates	320	280	230	185	165	167	148	115	100	90
	Rate per ton per mile	0.028	0.025	0.02	0.016	0.014	0.015	0.013	0.01	0.0087	0.008
	From San Francisco, Cal., to Chicago, Ill.										
2,418	Through rates	340	300	240	190	170	175	155	120	105	95
	Rate per ton per mile	0.028	0.025	0.02	0.016	0.014	0.014	0.013	0.01	0.009	0.008
	From San Francisco, Cal., to Pittsburg, Pa.										
2,886	Through rates	350	310	250	200	180	180	160	125	110	100
	Rate per ton per mile	0.024	0.021	0.017	0.014	0.012	0.012	0.011	0.009	0.008	0.007
	From Pittsburg, Pa., to San Francisco, Cal.										
2,886	Through rates	240	215	200	170	165	160	110	100	100	95
	Rate per ton per mile	0.017	0.015	0.014	0.012	0.011	0.011	0.008	0.007	0.007	0.0065
	From Chicago, Ill., to San Francisco, Cal.										
2,418	Through rates	240	215	200	170	165	160	110	100	100	95
	Rate per ton per mile	0.02	0.018	0.017	0.014	0.014	0.013	0.009	0.008	0.008	0.0078
	From Mississippi River (Savanna) to San Francisco, Cal.										
2,280	Through rates	240	215	200	170	165	160	110	100	100	90
	Rate per ton per mile	0.021	0.019	0.018	0.015	0.015	0.014	0.01	0.009	0.009	0.008
	From Missouri River (Omaha) to San Francisco, Cal.										
1,929	Through rates	240	215	200	170	160	160	110	100	95	85
	Rate per ton per mile	0.025	0.022	0.021	0.018	0.017	0.017	0.011	0.01	0.0098	0.0089

TABLE NO. 7.—*Statement showing freight rates on flour and grain from points in Kansas to Galveston and other points in Texas (taking same rates) prior to October 3, 1895, and also changes on and since that date.*

[Rates in cents per 100 pounds.]

Kansas points.	Flour.			Wheat, rye, and barley.			Corn and oats.		
	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.
Atchison	37½	43	37½	35	38	35	33	36	33
Beloit	42	43	42	37	38	37	35	36	35
Concordia	42	43	42	37	38	37	35	36	35
Clay Center	42	43	42	37	38	37	35	36	35
Hiawatha	42	43	42	37	38	37	35	36	35
Junction City	40	43	40	35	38	35	33	36	33
Kansas City	37½	43	37½	35	38	35	33	36	33
Leavenworth	37½	43	37½	35	38	35	33	36	33
Maysville	42	43	42	37	38	37	35	36	35
Seneca	42	43	42	37	38	37	35	36	35
St. Joseph	37½	43	37½	35	38	35	33	36	33
Washington	42	43	42	37	38	37	35	36	35
Burlington	40	39	40	35	34	35	33	32	33
Emporia	40	39	40	35	34	35	33	32	33
Eldorado	40	39	40	35	34	35	33	32	33
Eureka	40	39	40	35	34	35	33	32	33
Garnett	40	39	40	35	34	35	33	32	33
Hutchinson	40	39	40	35	34	35	33	32	33
McPherson	40	39	40	35	34	35	33	32	33
Marion	40	39	40	35	34	35	33	32	33
Madison	40	39	40	35	34	35	33	32	33
Peabody	40	39	40	35	34	35	33	32	33
Waverly	40	39	40	35	34	35	33	32	33
Yale Center	40	39	40	35	34	35	33	32	33
Anthony	40	35½	40	35	30½	35	33	28½	33
Augusta	40	35½	40	35	30½	35	33	28½	33
Arkansas City	40	35½	40	35	30½	35	33	28½	33
Beaumont	40	35½	40	35	30½	35	33	28½	33
Cherryvale	40	35½	40	35	30½	35	33	28½	33
Fredonia	40	35½	40	35	30½	35	33	28½	33
Peru	40	35½	40	35	30½	35	33	28½	33
Oswego	40	35½	40	35	30½	35	33	28½	33
Sedan	40	35½	40	35	30½	35	33	28½	33
Wellington	40	35½	40	35	30½	35	33	28½	33
Winfield	40	35½	40	35	30½	35	33	28½	33
Wichita	40	35½	40	35	30½	35	33	28½	33

TABLE NO. 8.—*Statement showing freight rates on flour and grain from points in Nebraska to Galveston and other points in Texas (taking same rates), prior to October 3, 1895, and changes on and since that date.*

[Rates in cents per 100 pounds.]

Nebraska points.	Flour.			Wheat, rye, and barley.			Corn and oats.		
	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.
Albion	42	45	42	37	40	37	35	38	35
Auburn	42	45	42	37	40	37	35	38	35
Beatrice	42	45	42	37	40	37	35	38	35
Columbus	42	45	42	37	40	37	35	38	35
Fairmount	42	45	42	37	40	37	35	38	35
Fairbury	42	45	42	37	40	37	35	38	35
Fullerton	42	45	42	37	40	37	35	38	35
Fremont	42	45	42	37	40	37	35	38	35
Grand Island	45	45	45	40	40	40	37	38	37
Lincoln	42	45	42	37	40	37	35	38	35
Hastings	45	45	45	40	40	40	37	38	37
Seward	42	45	42	37	40	37	35	38	35
Omaha	42	45	42	37	40	37	35	38	35
Tecumseh	42	45	42	37	40	37	35	38	35
Alma	45	48	45	40	43	40	37	40	37
Beaver City	45	48	45	40	43	40	37	40	37
Bloomington	45	48	45	40	43	40	37	40	37
Holdredge	45	48	45	40	43	40	37	40	37
Indianola	45	48	45	40	43	40	37	40	37
Juniata	45	48	45	40	43	40	37	40	37
Lexington	45	48	45	40	43	40	37	40	37
Minden	45	48	45	40	43	40	37	40	37
North Platte	45	48	45	40	43	40	37	40	37
Kearney	45	48	45	40	43	40	37	40	37
St. Paul	45	48	45	40	43	40	37	40	37
Loup City	45	48	45	40	43	40	37	40	37

TABLE NO. 9.—*Statement showing freight rates on flour and grain from points in Missouri to Galveston and other points in Texas (taking same rates) prior to October 3, 1895, and also changes on and after that date.*

[Rates in cents per 100 pounds.]

Missouri points.	Flour.			Wheat, rye, and barley.			Corn and oats.		
	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.
Chillicothe	40	43	40	35	38	35	33	36	33
Greenwood	40	43	40	35	38	35	33	36	33
Hannibal	37½	43	37½	35	38	35	33	36	33
Independence	40	43	40	35	38	35	33	36	33
Kansas City	37½	43	37½	35	38	35	33	36	33
Milan	40	43	40	35	38	35	33	36	33
Marshall	40	43	40	35	38	35	33	36	33
Platte City	40	43	40	35	38	35	33	36	33
Paris	40	43	40	35	38	35	33	36	33
Sedalia	40	43	40	35	38	35	33	36	33
St. Louis	37½	43	37½	35	38	35	33	36	33
Pleasanthill	40	43	40	35	38	35	33	36	33
Archie	40	39	40	35	34	35	33	32	33
Adrian	40	39	40	35	34	35	33	32	33
Amoret	40	39	40	35	34	35	33	32	33
Butler	40	39	40	35	34	35	33	32	33
Merwin	40	39	40	35	34	35	33	32	33
Lonetree	40	39	40	35	34	35	33	32	33
Lisle	40	39	40	35	34	35	33	32	33
Carthage	40	35½	40	35	30½	35	33	28½	33
Clinton	40	35½	40	35	30½	35	33	28½	33
Greenfield	40	35½	40	35	30½	35	33	28½	33
Lamar	40	35½	40	35	30½	35	33	28½	33
Montrose	40	35½	40	35	30½	35	33	28½	33
Monett	40	35½	40	35	30½	35	33	28½	33
Nevada	40	35½	40	35	30½	35	33	28½	33
Neosho	40	35½	40	35	30½	35	33	28½	33
Ozark	40	35½	40	35	30½	35	33	28½	33
Osceola	40	35½	40	35	30½	35	33	28½	33
Springfield	40	35½	40	35	30½	35	33	28½	33
Westplains	40	35½	40	35	30½	35	33	28½	33

TABLE NO. 10.—*Statement showing freight rates on flour and grain from points in Indian Territory to Galveston and other points in Texas (taking same rates) prior to October 3, 1895, and also changes on and since that date.*

[Rates in cents per 100 pounds.]

Indian Territory.	Flour.			Wheat, rye, and barley.			Corn and oats.		
	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.
California Creek	40	35½	40	35	30½	35	33	28½	33
Claremore	40	35½	40	35	30½	35	33	28½	33
Mola	40	35½	40	35	30½	35	33	28½	33
Kamama	40	35½	40	35	30½	35	33	28½	33
Lenapah	40	35½	40	35	30½	35	33	28½	33
Nowata	40	35½	40	35	30½	35	33	28½	33
Oalagah	40	35½	40	35	30½	35	33	28½	33
Rose	40	35½	40	35	30½	35	33	28½	33
Seminole	40	35½	40	35	30½	35	33	28½	33
Talala	40	35½	40	33	30½	35	33	28½	33
Tiawha	40	35½	40	35	30½	35	33	28½	33
Wagoner	40	35½	40	35	30½	35	33	28½	33
Watova	40	35½	40	35	30½	35	33	28½	33

TABLE NO. 11.—*Statement showing freight rates on flour and grain from points in Oklahoma Territory to Galveston and other points in Texas (taking same rates) prior to October 3, 1895, and also changes on and since that date.*

[Rates in cents per 100 pounds.]

Oklahoma Territory.	Flour.			Wheat.			Corn, oats, rye, and barley.		
	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.
Union City	31	35½	31	27	30½	27	27	28½	27
El Reno	32	35½	32	27	30½	27	28	28½	28
Kingfisher	33¼	35½	33¼	27½	30½	27½	29¼	28½	29¼
Dover	33¼	35½	33¼	28	30½	28	29¼	28½	29¼
Enid	35½	35½	35½	30	30½	30	30½	28½	30½
Kremlin	35½	35½	35½	31½	30½	31½	30½	28½	30½
Okarche	33	35½	33	27½	30½	27½	28½	28½	28½
Round Pond	36	35½	36	31½	30½	31½	31	28½	31
Pond Creek	36½	35½	36½	31½	30½	31½	31½	28½	31½
Medford	36½	35½	36½	31½	30½	31½	31½	28½	31½

TABLE NO. 12.—*Statement showing freight rates on flour and grain from points in Colorado to Galveston and other points in Texas (taking same rates) prior to November 30, 1895, and also all changes on and since that date.*

[Rates in cents per 100 pounds.]

Colorado points.	Flour.			Wheat, rye, and barley.			Corn and oats.		
	Prior to Nov. 30, 1895.	Nov. 30, 1895.	Jan. 28, 1896.	Prior to Nov. 30, 1895.	Nov. 30, 1895.	Jan. 28, 1896.	Prior to Nov. 30, 1895.	Nov. 30, 1895.	Jan. 28, 1896.
Colorado Springs	45	48	45	40	43	40	37	40	37
Denver	45	48	45	40	43	40	37	40	37
Pueblo	45	48	45	40	43	40	37	40	37
Trinidad	45	48	45	40	43	40	37	40	37
Little Buttes	45	48	45	40	43	40	37	40	37
Overton	45	48	45	40	43	40	37	40	37
Parkers	45	48	45	40	43	40	37	40	37
Trinchera	45	48	45	40	43	40	37	40	37
Bessemer	45	48	45	40	43	40	37	40	37
Golden	53	53	53	48	48	48	43	45	43
Boulder	53	55½	53	48	50½	48	43	46	43
Fort Collins	53	56	53	48	51	48	43	46	43
Greeley	53	56	53	48	51	48	43	46	43
Longmont	53	56	53	48	51	48	43	46	43
Loveland	53	56	53	48	51	48	43	46	43
Canfield	53	55½	53	48	50½	48	43	46	43
Eaton	53	56	53	48	51	48	43	46	43

TABLE NO. 13.—*Statement showing freight rates on flour and grain from points in Kansas and Missouri to Eagle Pass and Laredo, Tex., prior to October 3, 1895, and also changes on and after that date.*

[Rates in cents per 100 pounds.]

	Flour.			Wheat, rye, and barley.			Corn and oats.		
	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1896.	Jan. 20, 1896.
Kansas points.									
Atchison	45	47	45	40	42	40	38	40	38
Beloit	47	47	47	42	42	42	40	40	40
Kansas City	45	47	45	40	42	40	38	40	38
St. Joseph	45	47	45	40	42	40	38	40	38
Burlington	45	43	45	40	38	40	38	36	38
Hutchinson	45	43	45	40	38	40	38	36	38
Madison	45	43	45	40	38	40	38	36	38
Arkansas City	45	39½	45	40	34½	40	38	32½	38
Oswego	45	39½	45	40	34½	40	38	32½	38
Wichita	45	39½	45	40	34½	40	38	32½	38
Missouri points.									
Hannibal	45	47	45	40	42	40	38	40	38
Independence	45	47	45	40	42	40	38	40	38
Kansas City	45	47	45	40	42	40	38	40	38
St. Louis	45	47	45	40	42	40	38	40	38
Adrian	45	43	45	40	38	40	38	36	38
Butler	45	43	45	40	38	40	38	36	38
Lisle	45	43	45	40	38	40	38	36	38
Clinton	45	39½	45	40	34½	40	38	32½	38
Nevada	45	39½	45	40	34½	40	38	32½	38
Osceola	45	39½	45	40	34½	40	38	32½	38

To points in Mexico no through rates on flour and grain are published. Through rates are arrived at by adding to the rates to Eagle Pass and Laredo, as shown above, the local rates from these points to points of destination.

TABLE NO. 14.—*Statement showing freight rates on flour and grain from points in Nebraska and Colorado to Eagle Pass and Laredo, Tex., prior to October 3, 1895, and also all changes on and after that date.*

[Rates in cents per 100 pounds.]

	Flour.			Wheat, rye, and barley.			Oats and corn.		
	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.	Prior to Oct. 3, 1895.	Oct. 3, 1895.	Jan. 20, 1896.
Nebraska points.									
Beatrice	45	49	45	40	44	40	38	42	38
Fremont	45	49	45	40	44	40	38	42	38
Hastings	45	49	45	40	44	40	38	42	38
Omaha	45	49	45	40	44	40	38	42	38
Bloomington	45	51	45	40	47	40	38	44	38
Lexington	45	51	45	40	47	40	38	44	38
North Platte	45	51	45	40	47	40	38	44	38
Kearney	45	51	45	40	47	40	38	44	38
Colorado points.									
Denver	50	52	50	45	47	45	42	44	42
Colorado Springs	50	52	50	45	47	45	42	44	42
Pueblo	50	52	50	45	47	45	42	44	42
Trinidad	50	52	50	45	47	45	42	44	42
Bessemer	50	52	50	45	47	45	42	44	42
Fort Collins	58	59½	58	53	54½	53	48	50	48
Greeley	58	59½	58	53	54½	53	48	50	48
Boulder	58	59½	58	53	54½	53	48	50	48

To points in Mexico no through rates on flour and grain are published. Through rates are obtained by adding to the rates shown in the above tables to Eagle Pass and Laredo the local rates for these *points to points of* destination.

O

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 172.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1896.—Referred to the Committee on Claims and ordered to be printed.

Mr. GALLINGER presented the following

MEMORIAL OF THE STATE OF NEW HAMPSHIRE, ASKING THE FULL REIMBURSEMENT OF NATIONAL BOUNTIES ADVANCED TO RECRUITS MUSTERED INTO THE SERVICE OF THE UNITED STATES UNDER THE PRESIDENT'S CALL OF OCTOBER, 1863.

To the Senate and House of Representatives:

The State of New Hampshire represents as follows:

After the call of the President of October 17, 1863, for 300,000 volunteers, of which the quota of New Hampshire was 3,768, an agreement was made on the 5th of November, 1863, by the War Department that if the State or its various towns would pay in cash to each man mustered the amount of money offered by the General Government the latter would pay the bounty to the State or towns for every recruit raised under said call and duly mustered into the United States service and delivered at the general rendezvous.

Between the date of this agreement and February 15, 1864, when it was terminated, the State, through its several cities and towns, furnished its quota of volunteers, and they were duly mustered into the service of the United States, and the Government bounties of $302 for each fresh recruit and $402 for each veteran recruit were paid by the cities and towns to about 3,200 men and assignments taken of the rights of the recruits to such bounties, so that the amounts might not again be paid to the soldiers, the bounties being by the original circulars of the War Department payable to the recruits in installments during their term of service.

The condition of the account between the State and the United States on April 26, 1884, appears by letter of the Second Comptroller of the Treasury of that date as follows:

The amount refunded to the State appears to be as follows:

First installment—bounty and premium paid by United States disbursing officers	$196,209.00
Second installment—sent to State treasurer by paymasters in the field	26,360.00
Subsequent payments by paymasters in the field and in settlements with the Paymaster-General's Office	80,575.61
Settlements made by Second Auditor	232,495.10
Settlement made by Fourth Auditor	32,587.96
Total repayment	568,027.67
Original amount paid out by the cities and towns and advanced to recruits under the agreement and the proclamation of the governor	970,664.20
Leaving a balance unpaid of	402,636.33

This balance was unpaid upon the ground, as is alleged, that the money was advanced to soldiers *who deserted or failed to* render service.

The settlements of the above amounts, which were paid through the auditors of the Treasury, commenced soon after the close of the war and were continued from time to time until the class of claims constituting the foregoing balance of $402,636.33 was reached, and doubt arose concerning them. When they were at last pressed for authoritative decision, the Secretary of the Treasury transmitted the case for the consideration of the Court of Claims under section 2 of the act of March 3, 1883, the questions being as stated by the Second Comptroller in the above letter:

I. Whether there exists between the State of New Hampshire and the United States a contract which the State is entitled to set up, under which it has a right to further repayment of money so advanced.

II. Whether the United States is under obligation to so reimburse the State to the extent of all moneys advanced to the respective soldiers who were duly enlisted under said agreement, delivered at general rendezvous, and duly mustered into the service of the United States, without evidence of subsequent service on the part of the soldier.

Upon the hearing before the Court of Claims the State claimed not only that a fair construction of the original agreement of November 5, 1863, entitled the State to claim the reimbursement of all bounties advanced to recruits mustered into the service of the United States without evidence of subsequent service on the part of the soldier, but also that this construction of the agreement was explicitly adopted by the United States soon after it was entered into, through a letter of the assistant provost-marshal-general in New Hampshire to the provost-marshal-general, dated November 11, 1863, and the reply from the provost-marshal-general, dated November 19, 1863, written by express direction of the Secretary of War, which states that "if the recruit deserts after delivery to general rendezvous and muster into the United States service the Government is alone responsible."

The Court of Claims, however, on the 17th day of June, 1885, certified to the Treasury Department for its guidance and action its opinion that according to the terms of the agreement of November 11, 1863, the State could not claim the reimbursement of installments of bounties accruing after the soldiers were mustered into service, unless they remained in service, and themselves would have become entitled to them. With reference to the claim of the State that the terms of the original agreement were subsequently modified or authoritatively construed by the letter of the provost-marshal-general of November 19, 1863, the court say:

This correspondence between subordinate officers of the War Department does not make a contract with the State of New Hampshire. No officer nor representative of the State is a party to it. So far as appears they learned of its existence many years after it took place. No copy of it is found in the archives of the State. Governor Gilmore, in his letter to the Secretary of War asking for the repayment of the bounties after the State had furnished its quota, dated January 12, 1864, makes no mention of this correspondence. He incloses a copy of the telegram of November 5, and relies upon that, and nothing else, as constituting the agreement.

The State, therefore, is compelled to ask the intervention of Congress for her relief and the passage of an act for the final settlement of her claims upon the basis of the reimbusement of all national bounties actually advanced to recruits mustered into the service of the United States under the President's call of October, 1863. This relief is asked upon two grounds:

I. The Court of Claims construed too strictly the agreeement of November 5, 1863. A liberal but just interpretation of its terms will give them a meaning which will reimburse the State and its cities and towns for all the bounties which were actually advanced. Such an

interpretation is inevitable in view of the letter of the War Department of November 19, 1863. This letter is not set up as a contract, but as an authoritative construction of an existing contract. As such, it was not necessary that the State should appear to have been a party to it, or even to have known of it at the time. But as a matter of fact the State will endeavor to show to Congress that it was known to the State authorities, including Governor Gilmore, who died shortly after the war. That it was not known to the present State agent until a recent period is not material. The State of New Hampshire and its cities and towns and its people believed that under the agreement of November 5, 1863, every dollar actually advanced by them as national bounties would in time be reimbursed by the United States. Such reimbursement the State now believes is fairly due according to the contract.

II. Whether the State is or is not legally entitled to full reimbursement under a strict and literal construction of the contract, it asks Congress in its discretion to direct such reimbursement as being just and equitable under all the circumstances. The national bounties were advanced in good faith by the cities and towns of New Hampshire in expectation of reimbursement, and the United States had the immediate benefit of them. The loss must fall either upon the State or nation. In equity and good conscience New Hampshire asks the United States, in accordance with abundant precedents, to assume the burden of expenditures thus made for raising troops for the service of the United States in the war for the Union.

STATE OF NEW HAMPSHIRE,
By MOODY CURRIER, *Governor.*

FEBRUARY 22, 1886.

COPIES OF OFFICIAL DOCUMENTS.

No. I.—*State of New Hampshire to War Department.*

CONCORD, N. H., *November 4, 1863.*

Hon. E. M. STANTON.

SIR: If to secure its quota of men under the last call of the President for 300,000 men the State of New Hampshire or the various towns should pay in cash to each man mustered the amount of the bounty offered by the General Government, and take an assignment of his claim for a bounty, will the Government pay these bounties to the State or towns instead of to the men, at the time and in the manner they are to be paid to the soldiers respectively? If this can be done we all concur that we can raise our full quota speedily. Answer by telegraph.

J. A. GILMORE.
DAN'L CLARK.

No. II.—*War Department to State of New Hampshire.*

WAR DEPARTMENT,
PROVOST-MARSHAL-GENERAL'S BUREAU,
Washington, D. C., November 5, 1863.

His Excellency Governor GILMORE,
Concord, N. H.:

Your telegram to the Secretary of War, asking if "the State of New Hampshire or the various towns should pay in cash to each man mustered the amount of bounty offered by the General Government, and take an assignment of his claim for bounty, will the Government pay these bounties to the State or towns instead?" has been received.

The proposition will be entertained and the bounty paid to the State or towns, as proposed by you, for every recruit raised under the present call and duly mustered into the United States service and delivered at the general rendezvous.

JAMES B. FRY,
Provost-Marshal-General.

No. III.—*Provost-marshal-general in New Hampshire to the War Department.*

STATE OF NEW HAMPSHIRE,
OFFICE ACTING ASSISTANT PROVOST-MARSHAL-GENERAL,
Concord, N. H., November 11, 1863.

Col JAMES B. FRY,
Provost-Marshal-General, Washington, D. C.

COLONEL: From conversations held with Governor Gilmore I learn that he has had some correspondence with you respecting the State advancing the amount of bounty offered by the General Government to recruits and receiving an assignment from them of their claims. The governor has obtained your consent to this on behalf of the Government, but I believe it was found that additional legislation would be necessary for the State to carry out this plan, and the governor has in his proclamation recommended the towns and cities to adopt it, and it appears now that many, if not all of them, will adopt it. The governor seems to be of the opinion that the Government would pay the bounty in the stipulated installments, even if the recruit deserted. I do not think this would or should be done, and I have so informed such parties as have consulted me. I respectfully ask instructions on this point.

I have also been asked that in case the State does not furnish her full quota under this last call of the President, and a draft is ordered in January to fill it, whether the towns that have filled their quotas by voluntary enlistment will be exempt from that draft.

Since the receipt of your telegram of the 5th instant, saying that if a State filled her quota under this call no draft would be ordered in January, I have been of the opinion that the same principle would be applied to the towns so far as practicable. I think this would be proper and have a beneficial effect, stimulating all the towns to work earnestly in the recruiting business. I respectfully submit the suggestion to your consideration.

I am, colonel, very respectfully, your obedient servant,

O. A. MACK,
Major and Aid-de-Camp,
Acting Assistant Provost-Marshal-General.

No. IV.—*War Department to provost-marshal-general in New Hampshire.*

WAR DEPARTMENT,
PROVOST-MARSHAL-GENERAL'S OFFICE,
Washington, D. C., November 19, 1863.

Brig. Gen. E. W. HINKS, U. S. V.,
Acting Assistant P. M. G. for New Hampshire, Concord, N. H.

GENERAL: I am directed by the provost-marshal-general to acknowledge the receipt of your communication of the 11th instant, relative to the State advancing the amount of the bounty offered by the General Government to recruits and receiving an assignment from them of their claim. In reply, I am instructed to inclose herewith copy of a telegram to Governor Gilmore of the 5th instant, and to state that if the recruit deserts after delivery to general rendezvous and muster into the United States service the Government is alone responsible.

As far as possible towns, etc., will be exempted from draft if their full quota is furnished.

I am, general, very respectfully, your obedient servant,

SAMUEL B. LAWRENCE,
Captain Sixteenth Infantry and Assistant Adjutant-General.

No. V.—*State of New Hampshire to War Department.*

STATE OF NEW HAMPSHIRE, EXECUTIVE DEPARTMENT,
Concord, January 12, 1864.

Hon. EDWIN M. STANTON,
Secretary of War, Washington, D. C.

DEAR SIR: The telegram of November 5, 1863, from Colonel Fry, provost-marshal-general, to myself, assenting to repay to the towns of this State the United States bounties by them advanced in cash to the recruits from this State, has been followed *by the happiest* results. By the advances made by the towns and further bounties *paid by the State* and town authorities, the whole quota of New Hampshire, under *the call for 300,000* volunteers, has been filled.

The War Department has already given orders for the repayment of the Government bounties in the same installments in which they are payable to the recruits themselves.

The terms of the telegram above referred to, however, seemed to warrant the expectation that the United States would take the entire responsibility for the recruits after muster and delivery at the general rendezvous, and that the amount of bounties advanced would be repaid in full, without regard to the soldier's future career, and I therefore hope that course may be pursued and orders given to repay at once to the towns the full amount of the bounties advanced by them. There are many arguments in favor of this course, and I trust none against it sufficient to overcome the advantages.

New Hampshire furnished a larger proportional number of men under the draft than any other State, because our towns liberally paid to each conscript the sum of $300, not to enable him to pay the commutation money, which our State law prohibited the towns from doing, but to enable him to procure a substitute, or for his own use in case of his election to go himself.

In order to raise all the bounties which our towns have paid from the beginning of the war, they have drawn largely upon their resources and incurred large indebtedness, and the repayment of the moneys due them from the Government by installments will result in delay in keeping open accounts and making pay rolls and payments of no little complication, and in considerable losses from circumstances over which towns have no control.

The amount of the bounties was fixed by law, but the terms and manner of its payment was, I believe, placed entirely within the control of the War Department; as the men have received their bounties in cash no reason for withholding payment based upon the influence of payment by installments upon the soldier can exist, and the entire immediate repayment of the moneys to the towns of our State in the manner requested would be in accordance with the enlarged views which have always prevailed in the administration of the War Department, and which induced the original telegram which has resulted so favorably in this State. May I not, therefore, request an early and favorable decision upon my request that the whole amount of bounties advanced by the towns may be at once refunded, and that the accounts between the General Government and our towns, growing out of our late quota, now completely filled, may be finally closed?

I inclose a copy of the telegram of November 5, and remain, very respectfully, your obedient servant,

J. A. GILMORE, *Governor.*

No. VI.—*War Department to State of New Hampshire.*

WAR DEPARTMENT,
Washington City, January 16, 1864.

Governor J. A. GILMORE, *Concord, N. H.:*

The agreement announced in telegram from provost-marshal-general, dated November 5, to the effect that if the State of New Hampshire or the towns should pay the bounties offered by the United States, and take an assignment from the recruit, the Government would pay these bounties to the State or towns, instead of to the men, will be carried out in good faith, and General Hinks will receive orders accordingly. Experience has developed difficulties in this connection which were not foreseen by the Department, and the arrangement will terminate on February 15 next.

EDWIN M. STANTON, *Secretary of War.*

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 173.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1896.—Laid on the table and ordered to be printed.

Mr. VEST presented the following

PETITION FROM THE MEMBERS OF THE ARDMORE BAR ASSOCIATION OF THE INDIAN TERRITORY PROTESTING AGAINST THE REPEAL OF EXISTING LAW WHICH GIVES EXCLUSIVE JURISDICTION TO THE COURTS OF THE INDIAN TERRITORY OVER ALL CRIMINAL PROSECUTIONS IN SAID TERRITORY.

"ALL GOVERNMENTS DERIVE THEIR JUST POWERS FROM THE CONSENT OF THE GOVERNED."

ARDMORE, IND. T., *March 2, 1896.*

Senators HENRY M. TELLER, JOHN T. MORGAN, GEORGE G. VEST, and ORVILLE M. PLATT,
Washington, D. C.

GENTLEMEN: The undersigned, members of the Ardmore Bar Association, with feelings of grateful remembrance for the invaluable services which you have heretofore rendered in the United States Senate to the noncitizen residents of the Indian Territory, as well as to the best interests of the Indians and to the causes of progress, civilization, justice, humanity, and the true principles of American freedom, and believing that your courage, integrity, and pariotism will cause you to resist any attempt to perpetuate an un-American and unjust system of enforcing the law upon any portion of the people of our common country, it matters not how helpless the people may be at whose heads the injustice is aimed, or how powerful the authors of the wrong, respectfully invite your attention to a consideration of the following statement of facts and principles, and earnestly invoke a continuance of the courageous and statesman-like interest which you have heretofore taken in our affairs.

As is well known to you, the noncitizen residents of this Territory are not intruders. They came here by express invitation, and their right to be here is not questioned by the United States Government or by any well-informed person. It would be a useless consumption of time to enumerate the acts of Congress, as well as the conduct of the Indians, which recognize their right. These things are well known to you. The people are here; they have a right to be here. They must have law enforced among them for the protection of life, liberty, and the pursuit of happiness. The questions are: Have these people a right to be heard? Have they a right to complain of wrong and injustice and of a violation of the fundamental principles of American freedom by the

Government in its dealings with them; or are they but so much clay in the potter's hands, to be traded off at the whim and caprice of politicians and in order that influential constituents of some Senators or Representatives may prosper and fatten and grow rich by reason of the wrongs and injustice which may be practiced upon the people of this Territory?

We feel that we are citizens of the United States; that the people of our common country are our friends and brethren; that while some who are interested in perpetuating the present un-American and wholly unjustifiable system of enforcing the law among us, may, for the purposes of self-interest, turn a deaf ear to our complaint, and others, knowing our helplessness and fearing to antagonize those whose interest it is that these things shall remain as they are, will be deterred from following the natural promptings of their hearts and coming to our relief and to the relief of right, justice, freedom, and common humanity; yet we also feel that your treatment of our people in the past, as well as your entire course in public and private life, authorizes us to appeal with confidence to you, and through you to the Congress of the United States, and through Congress to the entire people of the Union for justice.

We are informed and believe that an organized effort is now being made to repeal that portion of the act of March 1, 1895, which was to go into effect on September 1, 1896, which gives to the United States courts in the Indian Territory exclusive jurisdiction of all offenses committed here.

Our contention is that the law giving the courts of this Territory full and complete jurisdiction of all offenses committed here was but an act of long-delayed justice; that its passage was demanded by existing conditions, and that it could not be defeated without violating the fundamental principles of freedom and the dictates of common justice and humanity. The Declaration of Independence says that the Colonies threw off the British yoke because, among other things, England sent among us "swarms of officers to harass our people and eat out their substance;" because we were "subject to a jurisdiction foreign to our Constitution;" because our people were subject to be transported "beyond the seas to be tried for pretended offenses."

The spirit of every one of these declarations applies to our condition to-day. If this spirit still lives, if it has moral, vital power beyond its name, we invoke that spirit and that power; we repeat these declarations that our fathers and your fathers made in 1776 and for which they pledged their lives, their fortunes, and their sacred honor. If these things were right then they are right now. Men may change, but principles are as eternal as the God from whom they emanate. Our contention is that they are the birthright of every American citizen, and that patriots and statesmen can not and dare not refuse them to us because we may be weak and helpless, or because those who would violate these principles may be strong and influential.

Congress is estopped from denying the correctness of our contention. If these things are not so, why was the act of 1895 passed? If it was an act of justice then, what change has taken place since that calls for its repeal? The law giving our courts exclusive jurisdiction has not been shown to be defective, unjust, or injurious. The people have made no complaint. If there has been complaint, it has been secret and dared not show its head in the light of public knowledge. It is not child's play for Congress to enact a law at one session and then, when that law meets with the approval of the great body of the people *to be affected* thereby, when that law is demanded by the most elemen-

tary principles of our Government, to repeal it without consulting those for whose benefit it was enacted?

It can not be said that our people are incapable of enforcing the law. By the act of 1895, Congress, after a full investigation, said that we were. There has been no retrogression among us. The records of the United States courts in Kansas, Arkansas, and Texas, when compared with the courts in this Territory, will show a much smaller per cent of convictions, in proportion to the cases tried, than has been obtained in the courts in the Territory. In other words, when cases are tried here, there is a much larger per cent of convictions than are obtained in the other courts referred to. The reports now on file with the Department of Justice will fully sustain this assertion. This shows conclusively that our people make as good jurors as do the people of Kansas, Arkansas, and Texas. It is a groundless and cruel reflection upon the intelligence and integrity of the people of this Territory to say that they can not be trusted to enforce the law. The man who makes such a charge is either grossly ignorant of our condition, a fool, or a knave; and may be all three.

The people of this Territory in intelligence, integrity, law-abiding disposition, and devotion to the principles of liberty are the equals of any people to be found anywhere upon the face of the earth. They have built towns, placed hundreds of thousands of acres of land in cultivation, developed mines, organized and operated banks, established all branches of industry, built churches, schoolhouses, Masonic lodges, Odd Fellows' halls, and other lodge buildings in every community all over this country. As a class, they are hard-working, moral, progressive and law-abiding people. They appeal to those who are their brethren, and who should be their friends, for justice.

If a man has been a good man—if he has led a moral, honest, truthful life—it is his right as an American citizen to be tried among those with whom he has lived and where the accusation and evidence against him may be heard and considered in the light of his past life. If a man has been a bad man—a thief, a liar, or a murderer—he has no cause to complain if he is compelled to be tried in a community where his true character is known. The good man is damaged, the bad man is benefited, by the change. Thus the ends of justice are thwarted. Where a person is tried beyond the Territory for an offense committed here, the jury have no personal interest in the enforcement of the law. It is merely an abstract proposition with them. They have no knowledge as to the character or want of character of the witnesses for or against the accused. Brazen-faced perjury stands before them on equal footing with modest, unassuming truth. Where a person is tried here for an offense committed here he is tried before a jury who are personally interested in the enforcement of the law, who understand existing conditions, and who feel a just pride in their country. He is tried before a jury who have some knowledge of the character of the witnesses for and against him, and who are therefore much better prepared to give credence to that to which credence is due than a jury would be who are strangers to all of the parties.

Thus truth is more apt to be vindicated and justice more apt to be done. The fundamental idea of freedom is that the people are capable of self-government. That while they may make mistakes, yet that when opportunity is given them for information and time for reflection they may safely be trusted to do right. If this is not true, then our form of government is not only a failure and a fraud, but it is founded upon a lie. If this is *true, if the people are capable* of self-government—that is, if

they can be trusted to make laws and enforce them—upon what principle can Congress deny to the people of this Territory the right to enforce the law among themselves? Where are the teachings of our fathers that require that our people should be subject to foreign jurisdictions; that they should be transported out of their country to be tried before strangers for either real or supposed offenses? Both by precept and example they condemned each and all of these things. It matters not how innocent a man may be, unless he is also a man of wealth, it simply means financial ruin for him to be indicted and tried in one of these foreign jurisdictions. We all know that no system of law is perfect. It is an infirmity of human nature and human law that the innocent, as well as the guilty, are frequently indicted; sometimes because the witnesses are honestly mistaken; sometimes through a misunderstanding of the evidence by the grand jury; sometimes because the grand jury did not have all of the evidence before them, and sometimes as the result of malice and perjury.

A person living in the Indian Territory who is depraved and who may be actuated by malice can go before a grand jury of one of these foreign jurisdictions and procure an indictment against an innocent man, which should not have been obtained and which would in many instances not have been obtained had the place of the pretended offense been sufficiently near to admit of thorough investigation. The result is that the defendant is compelled to travel hundreds of miles and carry his witnesses with him. The distance of the point of trial from the place of the supposed offense makes it more difficult to obtain the attendance of the witnesses and renders the continuance of the cases necessarily more frequent. Consequently there is a liability of being forced to make repeated trips to court. The inevitable result of this loss of time and expense is to break the poor fellow up, no matter how complete his vindication may be upon trial. Many parties who know of the commission of crimes or who are the sufferers from crimes, when they think of the time lost and the trouble and distance of traveling to and from these foreign jurisdictions and the liability of the cases being continued, fail to report the offenses to the officers when they would gladly do so if the trial could be had at a point near to their homes. Again, it is much easier for perjury to be committed in and fraud practiced upon these foreign jurisdictions, because the means of detection are so remote and the time is too short to allow investigation during a trial.

We understand that the object of punishing violations of law is twofold: First, to reform the criminal; second, to protect society against a repetition of similar offenses. We also understand that it is an accepted truism that it is the nearness and the certainty of punishment, and not its severity, that deters the criminal. If we are correct in these conclusions, it follows without saying that for the reasons above given the present system does not meet the objects of the law.

Our people have the same sentiments of pride and the same inherent love of fair play, justice, and liberty that has always characterized the American people. They regard the present system as un-American and unjust. They will suffer wrongs rather than appeal to foreign courts.

It matters not how faithful the officials may be, the present system is an outrage upon the people of this Territory, and unjustifiable by existing conditions, violative of every principle of right, justice, and freedom, and which can not be perpetuated without inflicting an outrage upon these people amounting to an absolute iniquity.

Furthermore, it is incontestably true that the present system of dual

jurisdiction over this Territory increases the cost of administering the criminal law incredibly, while at the same time impairing the efficiency of the executive force. That it increases the cost must be plain upon a moment's consideration. Remember, now, that there are three United States marshals for the courts in the Indian Territory, with nearly forty deputies; that there are in addition marshals and a great force of deputies to execute the processes of the courts at Paris and Fort Smith and Wichita, in the offenses of which those courts have jurisdiction. It must be true that if there existed a single jurisdiction, an officer going into a neighborhood for the service of process upon witnesses, or for the arrest of parties charged with crime, could serve all the processes of the court then issued upon everyone residing in that particular community. But, with a double jurisdiction, though an officer of the Indian Territory court travel 60 miles, at great expense to the Government, to serve the process of his court, and meet a witness in a case pending at Paris, Fort Smith, or Wichita, an officer from one of those courts must travel those 60 miles after reaching the Territory, and probably 100 miles before reaching it, to serve this same witness. When the great distances that have to be traveled in the country for these purposes are recollected, and bearing in mind how innumerable are the occasions for the service of process upon witnesses, or the arrest of parties upon warrants, a slight idea of the increase of officer's fees and the expense of mileage and subsistence arising under the working of the present system can be formed. In addition, dual grand juries, with all their expenses of organization, bailiffs, attendance, subsistence, and witness fees, investigate crime committed in the Indian Territory.

While this illogical and unprecedented dual system thus increases the expenses of administering the law to an aggregate that staggers belief, save to those who have watched its operation, its existence at the same time cripples the effectiveness, for the suppression of crime, of every officer in either jurisdiction. It does so in innumerable ways that can be made plain. If a crime be committed which is within the jurisdiction of the Territorial courts, and the marshal of the Paris, Fort Smith, or Wichita courts be in the locality of its commission at the time, there is neither obligation nor incentive for him to pursue the criminal, though he be in a position to do so the most effectively, for the reason that the offense is not within the jurisdiction of the court whose process he serves, and whatever he might voluntarily do would be at a risk of losing his time and expenses. So, vice versa, if an offense be committed which is within the jurisdiction of Paris, Fort Smith, or Wichita, a train robbery or murder, and an officer of the courts in the Territory be nearest to the offense, and have the best opportunity of arresting the criminal, neither obligation nor incentive exists for him to exert himself in apprehending the wrongdoer, for by so doing he not only takes the risk of losing his time and expenses incurred, and the danger of attempting the arrest, but also of subjecting himself to possible trial in other courts for some act wherein he has exceeded his authority and trespassed upon the other jurisdiction.

Thus it is that under the present system the force of men required to do the work must necessarily be doubled or trebled, the expense of such force increases in corresponding ratios, while to the extent that the jurisdiction over the same territory is divided into fractions, the men enforcing the law in these fractional parts have their efficiency in all ways crippled and impaired. Harmonious action against every grade of crime is impossible when the head of the executive force and all the men under him *act within a limited* field of jurisdiction, and are

compelled, at the same time, to be ever scrupulous lest their acts trench upon a different jurisdiction and they become subject to the pains and penalties of the law.

Another suggestion will make plain how the present system increases the cost of judicial administration. There are thirteen places of holding United States court in the Indian Territory. The longest distance which a witness must travel in going to any of the courts is probably 70 miles. Whereas the distance which a witness must travel in going to Paris, Fort Smith, or Wichita is frequently 250 miles or more. When it is remembered that the officer must travel this distance in going from Paris, Fort Smith, or Wichita to serve the witness and in returning to his court, and that the witness must travel the distance in going to and coming from court—if the difference between 70 miles and 250 miles is multiplied by 4, an idea is had of the difference of the cost of mileage alone in the case of a single witness.

Now, bearing in mind that this witness must be taken before a commissioner of the Paris, Fort Smith, or Kansas court, and must then be carried before a grand jury at one or the other of these places, and then will probably be required to make more than one trip before the case is finally disposed of by trial, and that the officer will, in that case, have to serve him more than once, the difference between 70 and 250 miles should be multiplied by 8 or 12, in order to arrive at the difference in the way of mileage in the expense of the two cases. It must be borne in mind that much of this cost and expense to the Government is incurred for time spent and distance traveled on foreign soil. It matters not how near a defendant or a witness may live to a point in the Territory where a court is held—he may live right at the point—the officials from Wichita, Fort Smith, or Paris must spend days, incur heavy subsistence expenses, and will run up large fee bills for serving process, which could and should be served at a nominal cost to the Government by officials from courts located within the Territory.

Say that a defendant or attached witness lived at Chickasha; the officer from Paris would be forced to travel a distance of 250 miles to reach that point and the same distance in returning. If the Territorial courts had exclusive jurisdiction this expense would all be saved. In addition to this the expenses of the defendant or witness must also be computed.

The fact that all of these expenses may be incurred in a case where the defendant is only charged with the larceny of property of the value of $10, fully justifies us in denouncing the present system as an outrage and an iniquity.

It is just such unnecessary and wasteful extravagance as this of the money wrung by taxation from an already overburdened people that is rapidly causing the common people, who do the work, pay the taxes, and bear the heat and burden of the day, to complain loudly.

In the light of these undeniable facts, who can say but that here is a cause for just complaint? Is this the only case, or is it but a sample of the way in which the people's money is wasted and the people's burdens are increased?

It is believed that if the Government should pay a bonus of $75,000 a year to the towns of Paris, Fort Smith, and Wichita each, and divest their courts of the jurisdiction which they now exercise in the Territory, the result would be a handsome profit to the Government.

The Department of Justice and Congress have justly adverted to the great and growing expense of the Federal judiciary, and especially to administering the laws in the Indian Territory.

The ingenuity of man would be exhausted in the endeavor to devise

a system that could more successfully swell expense unnecessarily than the system which is sought to be perpetuated.

But those who favor a retention of the jurisdiction at Paris, Fort Smith, and Wichita profess great solicitude for our welfare. They say they would give us full jurisdiction, but for the fact that we are not prepared to take care of it; that the dockets of our courts are already crowded with civil cases, and that if we had full criminal jurisdiction it would interfere with the trial of our civil cases. If this be true, what does it amount to? Our country is new, and to a large extent our resources are not fully developed. Civil litigation will increase, and not diminish until our mutual rights and relations with each other are settled. This will be at some indefinite period in the future.

This, not now but some other time, promise of our opponents amounts to nothing. If allowed to have their way the convenient season, like the conversion of Felix, will never come. We are not deluded by their protestations of friendship. In our judgment a spear is concealed within the bouquet of flowers which they hand us; they are hugging us with one hand and stabbing us with the other.

If our courts are now inadequate the remedy is to make them adequate, and not put the Government to unnecessary expense, inflict wrong and injustice upon us, and violate principle by a continuance of the present inefficient system.

There are many other suggestions of a similar character which might be made. For fear of trespassing too much upon your patience and time, we will not further pursue this subject.

In consideration of these things, we respectfully submit that the present system of enforcing the law in the Indian Territory is without justification or excuse; that it is violative of every principle of freedom that is dear to the hearts of the American people; that it is a great and useless expense to the Government, and an outrage upon the people affected thereby.

We therefore appeal personally to each of you as patriots and statesmen and lovers of humanity, and through you we appeal to all such others in Congress, and in the name of our common brotherhood and of the principles of our fathers, we ask justice at your hands.

HENRY M. FURMAN.	CORNELIUS HARDY.
C. F. HERBERT.	M. L. GARRETT.
F. G. BARRY.	ROBT. H. WEST.
JESSE HILL.	W. F. BOWMAN.
GEO. M. CURTIS.	C. M. CAMPBELL.
W. J. CRUER.	C. M. SITMAN.
S. S. BLEDSON.	WM. PFIEFFER.
LU CRUER.	MORAN SCOTT.
A. H. LAW.	C. B. KENDRICK.
ROBT. E. LEE.	CORNELL BENNETT.
J. T. FOWLER.	A. EDDLEMAN.
JNO. A. MCCLURE.	JOHN G. FLEMING.
R. H. BRUCE.	R. W. DICK.
R. M. CANNON.	A. C. CRUCE.
THOS. NORMAN.	J. C. THOMPSON.
H. H. BROWN.	W. B. JOHNSON.
CHILIAN RILEY.	R. H. KELLEY.
ARTHUR WOLCOTT.	EDWIN HOBBY.
H. C. POTTERF.	W. R. BLEAKMORE.
W. A. LEDBETTER.	JOHN HINKLE.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 174.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1896.—Referred to the Committee on Public Buildings and Grounds and ordered to be printed.

Mr. QUAY presented the following:

MEMORIAL OF THE NEW YORK PRODUCE EXCHANGE CONCERNING A SITE FOR THE NEW CUSTOM-HOUSE BUILDING.

To the Senate and House of Representatives of the United States:

We, the board of managers of the New York Produce Exchange, beg leave to address your honorable body in behalf of what is known as the Bowling Green site for the new custom-house in the city of New York. We are moved to take this action by the fact that the Chamber of Commerce of this city has lately sent a memorial to your honorable body urging that a new custom-house be constructed in the city of New York on the old site, which is bounded by Wall, William, and Hanover streets and Exchange Place.

We would respectfully call your attention to the fact that the New York Produce Exchange is a body composed of 3,000 members, most of them in active business, and holding daily sessions; that in its capacity as a commercial exchange it handles the surplus products of the country, which are exported, and that most of its members, by reason of their making these foreign shipments, have, in compliance with the provisions of the law, to make a manifest at the custom-house of all goods exported; that while it is true that some of the members of the Chamber of Commerce, being importers, have occasion to go to the custom-house, nevertheless they have to do almost altogether with the appraisers' stores and not with the custom-house itself, and on their representation in that regard Congress authorized the construction of the new appraisers' stores in an uptown district, and directed the construction of the new custom-house in a downtown district.

We are convinced that the action of the officials of the Federal Government who were from time to time, by the provisions of the several acts which have been passed since 1888 respecting this subject, charged with the duty of carrying out the instructions of Congress, have been taken with the widest and truest sense of the needs of this district, and such officials have uniformly recommended the so-called Bowling Green site as the proper site for the new custom-house. Among such officials are three Secretaries of the Treasury, and even the present collector, who has been actively interesting himself in the promotion of legislation looking to the construction of the new custom-house on the old site instead of the Bowling Green site.

We believe that among the facts which led to this uniform action on the part of the officials referred to are these, namely: That the old site has but 31,000 square feet of superficial area, while the Bowling Green site has upward of 64,000 square feet; that the old site can doubtless be sold for $3,000,000, and the Bowling Green site purchased for $2,100,000; that there are no means of transit to reach the immediate vicinity of the old custom-house, while the accessibility of the Bowling

Green site is shown by the fact that the stations of the four elevated railroads are in the immediate vicinity, and cable-car lines pass on each side of the Bowling Green site; and a prominent station of the underground Rapid Transit Railway, authorized by the action of the voters of this city, will be directly in front of said site; and eight ferries now land within a block thereof. Also the fact that the present custom-house site is bounded by streets which are narrow, and surrounded by modern fireproof buildings which will tower over any Federal building that will be built there, thereby shutting out the light, air, and ventilation; while the Bowling Green site is bounded by the bay on the west, on the north by Bowling Green Park and Broadway, on the east by Whitehall street, which is an unusually wide street, and on the south by Bridge street, which is also amply wide. And should a new building be built on the old site, it could not, under the regulations of the Treasury, cover the entire block, since Hanover street and Exchange Place, which bound it on two sides, are not 40 feet wide.

We would urge upon your consideration the further fact that the custom-house is intended not for the city, but for the port of New York, and that the site we advocate is the most central point in said port.

We desire also to call to your attention the fact that the bill introduced by the honorable Representative from the Fourteenth district of this State, Mr. Quigg, provides that the Government may, during the construction of the new custom-house, remove the custom-house business to some other place or places, and that the Secretary of the Treasury may rent such temporary quarters at a rental of not to exceed $250,000 per annum. We are familiar with the accommodations that are obtainable for such occupation, and we think that an investigation by your body will show that there is no building now constructed, or that can be constructed in the near future, that can be so used by the Government. Should the sum of $250,000 per year be expended for a period of five years (the shortest time in which it has been suggested that the new building can be constructed) an outlay of $1,250,000 will be made, which in our judgment would equal about one-quarter of the cost of the new custom-house on the Bowling Green site, while if the Government retains the old custom-house, and it is sold by the Government, but occupied under the provisions of the bill introduced by the honorable Representative from the Fifteenth district of this State, Mr. Low, at a rental of 5 per cent of $3,000,000, the Government will save upward of $500,000 by adopting the latter course.

We would respectfully call your attention to the suggestion in said memorial of said chamber respecting the necessity of locating the custom-house on the old site so as to accommodate the insurance companies of this city, and we desire to state that we differ with said chamber as to the force of said argument.

This body does not consider that there is any force in the argument that the custom-house should be near the subtreasury, because of the adoption by the Federal Government of the considerate and effective method of permitting payments made to the custom-house to be by draft on the subtreasury, instead of by bills and specie as formerly.

We desire to call your attention to the fact that the offices of all the foreign steamship lines are in the immediate vicinity of Bowling Green.

We therefore respectfully urge the passage of the bill introduced by Mr. Low.

New York, March 12, 1896.

[SEAL.]

HENRY D. MCCORD, *President.*
FRED'K H. ANDREWS, *Secretary.*

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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 175.

IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1896.—Referred to the Committee on Commerce and ordered to be printed.

The VICE-PRESIDENT presented the following:

LETTER FROM THE ATTORNEY-GENERAL, IN RESPONSE TO SENATE RESOLUTION, DATED MARCH 16, 1896, RELATIVE TO THE CONDEMNATION OF LANDS IN THE STATE OF OREGON NECESSARY FOR THE USE OF THE GOVERNMENT IN THE CONSTRUCTION OF THE PROPOSED BOAT RAILWAY AT THE DALLES OF THE COLUMBIA RIVER.

DEPARTMENT OF JUSTICE,
Washington, D. C., March 17, 1896.

SIR: In compliance with a resolution of the Senate, passed the 16th instant, calling for information—

as to what steps, if any, have been taken by the Department of Justice, by proceedings in court or otherwise, to secure the condemnation of lands in the State of Oregon necessary for the use of the Government in the construction of the proposed boat railway at The Dalles of the Columbia River, and, if no such proceedings have been instituted, the cause for delay,

I have the honor to state that, agreeably to a request made by the Secretary of War, the United States attorney for the district of Oregon was in January last instructed by this Department—

to institute proceedings for the condemnation of such portions of the right of way selected by the War Department for said boat railway as cross or encroach upon the right of way of the Oregon Railway and Navigation Company, including the land necessary to be acquired for the purpose of changing the location of the road of that company where its right of way is crossed or encroached upon as aforesaid, and where the change in the line of such road is required for the construction of the proposed boat railway.

A plat and description of the premises to be covered by the condemnation proceedings were to be furnished the United States attorney by the United States engineer officer in charge of the work.

The foregoing exhibits the steps thus far taken by this Department to secure the condemnation of lands needed for the construction of said boat railway.

Presuming that the United States attorney had already commenced proceedings pursuant to the above-mentioned instructions, he was on the 12th instant, by a letter of that date, requested to advise me as to what progress has been made therein, etc. Until a response to that letter is received I shall be unable to state the cause for delay, if any exists, touching the institution or prosecution of such proceedings.

I am, sir, very respectfully,

JUDSON HARMON,
Attorney-General.

The PRESIDENT OF THE SENATE.

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54TH CONGRESS, 1ST SESSION. | SENATE. | DOCUMENT No. 176.

IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE SECRETARY OF THE INTERIOR, IN RESPONSE TO RESOLUTION OF THE SENATE OF MARCH 11, 1896, TRANSMITTING A LETTER FROM THE COMMISSIONER OF INDIAN AFFAIRS, SHOWING THE PRESENT STATE AND CONDITION OF THE FUNDS OR ANNUITIES OF THE CHEROKEE, CHOCTAW, CHICKASAW, CREEK, AND SEMINOLE TRIBES OF INDIANS.

DEPARTMENT OF THE INTERIOR,
Washington, March 17, 1896.

SIR: In conformity with the "resolution" of the Senate, dated the 11th instant, I have the honor to herewith transmit a copy of a letter, dated the 16th instant, from the Commissioner of Indian Affairs, showing the "present state and condition of the funds or annuities of the Cherokee, Choctaw, Chickasaw, Creek, and Seminole tribes of Indians under the control of the United States, and for the future payment of which the United States is obligated by law or treaty.

Very respectfully,

HOKE SMITH, *Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 16, 1896.

SIR: I have the honor to acknowledge the receipt, by your reference of the 12th instant for report, of the following Senate resolution, namely:

Resolved, That the Secretary of the Interior is directed to inform the Senate of the present state and condition of the funds or annuities of the Cherokee, Choctaw, Chickasaw, Creek, and Seminole tribes of Indians under the control of the United States, and for the future payment of which the United States is obligated by law or treaty.

The following statement will exhibit the present state and condition of the funds and the annuities of the tribes named:

Tribes and fund.	Amount on deposit in the United States Treasury, in lieu of investment at 5 per cent per annum, and bonds held in trust.	Specific amounts hereafter to be appropriated by Congress on account of treaty obligations.	Annual interest.
Cherokee asylum fund	$64,147.17		$3,207.36
Cherokee national fund	1,271,904.65		63,595.23
Cherokee orphan fund	352,456.05		17,622.80
Cherokee school fund	797,756.01		39,887.80
United States issue to Union Pacific Railroad, Eastern Division	230,716.10		13,842.97
Total	2,716,979.98		138,156.16
Choctaw treaty		$390,257.92	19,512.90
Choctaw general fund	498,514.00		24,925.70
Choctaw orphan fund	37,014.29		1,850.71
Choctaw school fund	49,472.70		2,473.63
Total	585,000.99	390,257.92	48,762.94
Chickasaw national fund	1,306,695.66		65,334.78
Creeks, treaty		475,168.00	23,758.40
Creek general fund	1,800,000.00		90,000.00
Total	1,800,000.00	475,168.00	123,758.40
Seminoles, treaty		570,000.00	28,500.00
Seminole general fund	1,500,000.00		75,000.00
Total	1,500,000.00	570,000.00	103,500.00

In addition to the above, the Creeks, Chickasaws, and Choctaws received under treaty stipulations the following permanent annuities, which sums capitalized would require appropriation and would be as follows:

	Amount.	Interest.
Creeks	$524,200.00	$26,210.00
Choctaws	210,400.00	10,520.00
Chickasaws	60,000.00	3,000.00

RECAPITULATION.

Cherokees:		
Fund in the Treasury in lieu of investment		$2,716,979.98
And United States bonds held in trust.		
Choctaws:		
Funds in the Treasury in lieu of investment	$585,000.99	
To be appropriated by Congress	390,257.92	
Capitalized permanent annuities	210,400.00	
		1,185,658.91
Chickasaws:		
Funds in the Treasury in lieu of investment	1,306,695.66	
Capitalized permanent annuity	60,000.00	
		1,366,695.66
Creeks:		
Funds in the Treasury in lieu of investment	1,800,000.00	
To be appropriated by Congress	475,168.00	
Capitalized in permanent annuities	524,200.00	
		2,799,368.00
Seminoles:		
Funds in the Treasury in lieu of investment	1,500,000.00	
To be appropriated by Congress	475,168.00	
		1,975,168.00
Grand total		10,043,870.55

The resolution is respectfully returned herewith.

Very respectfully, D. M. BROWNING, *Commissioner.*

The SECRETARY OF THE INTERIOR.

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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 177.

IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1896.—Referred to the Committee on Finance and ordered to be printed.

Mr. STEWART presented the following

MEMORIAL OF ANSON WOLCOTT, OF WOLCOTT, IND., TO THE CONGRESS OF THE UNITED STATES, RELATIVE TO THE MONETARY LAWS AND MONETARY CONDITION OF THE UNITED STATES.

Your memorialist, Anson Wolcott, a native-born citizen of the United States, respectfully presents the following for the favorable consideration of your honorable body:

MONETARY LAWS AND MONETARY CONDITION OF THE UNITED STATES.

Some of our prominent politicians and statesmen entertain dangerously erroneous opinions in relation to the financial laws and financial condition of the United States. The greenback legal tender notes, issued during the late war, are an integral part of our present financial system, and the strongest and most reliable part of that system.

The dangerous errors, before alluded to, are embodied in the expressed opinions of the Secretary of the Treasury and others high in governmental authority, that the greenback legal-tender notes and Treasury notes, instead of being useful and indispensable at this time, as parts of our money supply, are really discrediting and harmful to the people of the United States and to the nation, and should be redeemed, canceled, and permanently eliminated from the currency of the country, which would then consist only of gold and silver coin, gold and silver certificates, and national-bank notes, not legal tender, all to be on a gold basis and redeemable in gold only. This is the theory of the Secretary of the Treasury as to what our permanent financial system should be, though as a matter of fact we do not have any reliable control of gold for this or any other purpose.

There is nothing in present conditions, if continued, that can lead to a rational expectation that we ever in the future will have a reliable supply of gold, adequate to our national wants, as the basis of a national financial system. On the contrary, increased scarcity and destitution is the certain promise of the future. In discussing this subject, having a due respect for the exalted and very influential position of the Secretary of the Treasury, it seems most proper that the discussion shall take the form of a review, as far as may be, of the facts and theories set forth by the Secretary in his late report; because the Secretary of the Treasury, more than any other person or officer, is our national financial representative. It is believed his errors of opinion are fundamental and complete, and that they are based upon assumptions, and not upon realities. These assumed but not real facts under-

lie the argument of his report, in his effort at accounting for the distressing financial, industrial, and business conditions of the country, as they have progressively developed during the last few years, and as they now exist, in the climax of their, as yet, greatest evils.

In the Secretary's long report of 71 pages, relative to the matters under discussion, the real cause of our financial, industrial, and business derangements are not once alluded to. They are as totally ignored as though they had no existence. The assumed cause, on which he rests his whole discussion, is entirely the creation of his imagination. A most strange disregard of the lessons taught by our past history and experience is the marvel of his report. No allusion is made to the supreme cause of all our troubles, financial and industrial, namely, the investment, during many recent and successive years, by persons residing in Europe, of vast sums of money in all the best paying properties in the United States.

Sixty per cent of the stocks and bonds of the vast Pennsylvania Railroad system is said to be owned in Europe.

Nearly all the Illinois Central Railroad, extending from Chicago to New Orleans, with great city properties, and branches and laterals, is owned in Holland.

Great ownership in the immense properties of the New York Central Railroad Company, and all its vast railroad connections, is held in Europe.

A controlling interest in the Great Northern Railroad, running from Lake Superior to the Pacific Ocean, is owned in England.

A controlling interest in the Northern Pacific Railroad, lying south of and as extensive as the last-named railroad, is owned in Germany.

Large, if not controlling, interests in every other important railroad in the United States are owned by European investors.

The immense Carnegie Iron Works at Homestead, in Pennsylvania, are owned principally in Scotland.

The controlling interest in the famed Pillsbury flouring mills at Minneapolis, the largest in the world, is owned in England.

The great iron mines of the Lake Superior region, said to produce 10,000,000 tons of iron ore a year, are largely held by English investors.

A controlling interest in the Grant smelters in Denver and Omaha, the largest in the world, is owned by Englishmen.

Foreigners own immense interests in the breweries of the country, largely if not controllingly.

The largest bankers of New York are foreigners, or representatives of foreign banking houses. These are the great gold shippers.

A large percentage of our fire and marine insurance is in foreign insurance companies.

Five-sixths of all the freightage of our foreign commerce is carried in foreign vessels.

Foreigners own millions of acres of our farming lands.

They own many millions of dollars in value of our city properties.

Their mortgage loans overspread the face of the country.

Foreign capitalists own hundreds of millions of United States bonds and State bonds; and they own untold millions of city bonds and other municipal obligations in the United States, and vast amounts of other properties not here specially stated.

So great has become the aggregate of all these ownerships in United States properties by foreigners living in foreign countries that the aggregate can not be less than $7,000,000,000 or $8,000,000,000, with an *average of earnings* of not less than 5 per cent per annum.

Besides, there are great numbers of wealthy people who are annual tourists to foreign countries; tourists who live expensively, and invest large sums of American money in European luxuries and costly productions. The sums so expended have been estimated at $100,000,000 yearly. This is probably excessive, but the amounts are known to be very great.

The aggregate of all these European dues on investments in this country, and expenditures by our tourist classes, may with fairness and moderation be placed at $400,000,000 each year. This is Europe's annual money demand upon the United States, to be responded to in gold, or gold values, in new railroad or other investments, or trade balances.

For the year 1894 the Secretary of the Treasury reports, page 16 of his late report, United States exports of merchandise to foreign countries	$892,140,572
Our imports of merchandise for the same year the Secretary reports at	654,994,622
Our import accounts are made up on bills of purchase in Europe. Add 5 per cent to the last above statement for transportation to the United States, interest, and insurance	32,749,731
Making a total of	687,744,353
Excess of exports of merchandise above imports for the year 1894	204,744,353
Take this sum from the $400,000,000 due annually to Europeans living in Europe, on their various investments in the United States, and the deficiency against the United States, or the whole account for the year 1894, is	195,604,781
But the United States Government also had a deficiency for the year 1894. The United States Treasurer, in his last report, page 7, says the expenditures of the Government exceeded its revenues by	69,803,260
The mutual, commercial, and financial accounts of the people of the United States with foreign people, and the Government account, show a total deficit of	265,408,041
For this indebtedness foreigners took United States bonds, more gold for exportation, and new railroad and other securities.	
For the year 1895, the Secretary in his said report, page 16, estimates the aggregate of our exports of merchandise to foreign countries at	807,578,165
Imports for the same year cost in foreign countries	731,969,965
Add for freights, interest, and insurance to the United States	36,598,825
And we have, as the cost of our imports	768,568,790
Excess of exports of merchandise above imports for the year 1895	39,009,375
Amounts due Europeans in Europe on interest, dividend, and rental accounts on investments in the United States, annually	400,000,000
Deduct balance of merchandise exports	39,009,375
And the balance on the whole account against the United States is	360,990,625
The treasurer, in his report for the year 1895, says, page 7, that the expenditures of the United States Government exceeded the revenues	42,805,233
Making the total money shortage of our people and our Government for the year 1895	403,795,858

to be made up by new investments, by our foreign creditors, in new railroad and other securities, including Government bonds, and gold shipments. Thus in two years of peace the various individual and corporate obligations of our people to foreigners and the shortage of the Government of the United States amounted to the enormous sum of $669,198,899. In another year this deficiency will be increased to $1,000,000,000.

The Secretary of the Treasury sees nothing of all this, and says the greenbacks and Treasury notes are doing all the mischief.

"Blunders are *worse than crimes.*" In reality, the greenbacks and

Treasury notes have been to our finances and industries as lifeboats to a crew of shipwrecked mariners, without which all would have perished. We can scarcely imagine the bottomless depths of bankruptcy and ruin that this country would have encountered in the years 1894 and 1895 but for the saving power of our greenbacks and Treasury notes, which largely stayed the tide of universal financial and industrial disaster.

Foreigners did not desire them in foreign countries; and for this reason only did they not follow the gold abroad, and leave us almost moneyless in the special distresses this country has been suffering for the last two years and more.

The laws of our country have been made and interpreted for the benefit of foreign investors with a constant and increasing disadvantage to our own people. .

Money corners have been created by cunningly devised laws, having as their distinct purpose the manipulations of the market valuesof our stocks, bonds, grain, cotton, and other properties, and the wrecking of these values by robber wreckers, for the plunder of our people by force of our own laws.

Our people are flattered by the theory that they are on a gold basis. How completely they are deceived. They have not the good fortune to be on any real money basis. They have an ideal only. Our people, independently of their creditors, have no gold in their control. What they occasionally have is by permission of their creditors, and not otherwise. The United States Government buys gold with bonds, and creditors take it away. The United States buys more gold with bonds, and creditors again take it away, and so on and on. Is this a gold basis? Has it the stability of a basis? A base is something that supports. Our so-called base is a power to tear down and destroy.

Foreigners play our markets at will, adding robbery to robbery by forced and varying prices. Not we, but our creditors, have our gold-money basis, and they allow us to amuse ourselves (they being more amused) by calling the gold our money basis, when we do not really own any gold in the country worth naming. It belongs to our creditors. How often has this been demonstrated? Many, many times.

The sooner the people of the United States really understand this situation, the sooner will their salvation from impending destruction be the work in which they will most earnestly engage.

Our Secretary of the Treasury fears gold will go to a premium. Does he not know that the premium on gold is already a very high premium, as measured by all property values? Gold buys property, and property buys gold. Gold now buys twice as much property as this same gold bought a few years ago. Then a bushel of wheat bought a dollar of gold; now it takes two bushels of wheat to buy a gold dollar. The premium in wheat, on each gold dollar, is a bushel of wheat. A few years ago ten pounds of cotton would buy a gold dollar. Now it takes twenty pounds of cotton to buy a gold dollar. The premium on one gold dollar is now ten pounds of cotton. The laborer's premium on a gold dollar is four hours of extra work. Often the laborer's premium on gold is a loss of all work. These illustrations fairly represent the present premium on gold, when the gold is purchased with any of our properties, or by labor. We are now paying, actually paying, in our great national financial transactions, enormous premiums on the gold we have been buying, during the past two years, and are now buying with United States bonds.

On page 57 of the Secretary's report he says $257,000,000 of 4 per cent 30-year-old bonds have been sold—interest on which already exceeds

$75,000,000. When these bonds shall have matured, the interest, 120 per cent for the whole time, will amount to $308,000,000, all of which $308,000,000 is a premium on the $257,000,000 bought by United States bonds, sold to buy gold. This premium results directly from the past and present mismanagement of our national finances. Such is the undoubted, deplorable fact, as the following history of our financial laws and their administration for the last twenty-two years will prove, and prove as certainly as any demonstration is provable in logic or mathematics.

In 1870 a coinage bill was introduced into the Congress of the United States which slyly omitted all provision for coining the silver dollar. This bill became a law in 1873, and provided only for the coinage of silver coin to be legal tender for $5. This substantially demonetized silver, and legally placed the country on a gold basis. (See Report of the Director of the Mint for the year 1893, p. 24.)

The United States was not and had not been on a specie basis for twelve years. Why, when both gold and silver, all the nation had of these coins, were not sufficient to maintain a specie basis, this act was passed is left to the judgment of other people. Thousands of millions of dollars, the aggregate of United States, State, municipal, and corporation bonds, industrial and personal obligations, payable by their terms in coin, which meant both silver and gold when the obligations had been created, thus became in form and law gold obligations, and remained so as long as the coinage law of 1873 continued in force. Germany and nearly all the leading European nations adopted similar coinage laws between 1873 and a few years later, demonetizing silver or restricting its coinage and use as money. England alone had legally been on a gold basis since 1816; though this was a legal fiction, as England did not pay coin at all from 1797 until 1821. The legal action of the European nations in respect to silver cheapened silver bullion in all the markets of the world. Had the United States continued the coinage of silver, as the laws, the Constitution of the United States, and the usages of the Government from its foundation justified and required, and as our debtor country needed, the partial abandonment of the use of silver in Europe would have brought to our markets and mints, in addition to the produce of our mines, the surplus of European, Mexican, and South American silver. Large coinages of silver would have followed, and the payment of all the coin obligations of the country in gold and silver would have been both our legal and equitable right.

This abundant supply of silver and gold coin would have stimulated all our industries. Our surplus productions and surplus money would have paid in full, and forever, many hundreds, if not thousands of millions, of the debts and obligations of our nation and people. With the palpable errors of the law of 1873 demonetizing silver, it was retained as the law of the land for five years of financial and industrial suffering and distress of the most extreme character. The money lenders who had obtained this law held it on the statute books of the United States till our nation was an industrial ruin. The folly of European nations in demonetizing silver was our opportunity; but not realized, because gold financiers dictated our financial laws, as they also did those of Europe. While Mammon raged, patriotism was sleeping or deceived. At length, universal distress brought universal discontent, which caused a modification of our coinage laws in 1878, when the Bland-Allison Act, so called, was enacted, and silver was restored to only a partial use. This law was a concession to uncontrollable public opinion; but not till

great injuries to our people by the law of 1873 and its advantages to European money lenders had been its prolific and unholy fruitage.

The Bland-Allison law was not general. Its enactments were limited by special provisions. It did not provide for the free and unlimited coinage of silver, as it should have done, to meet the necessities of our great, growing, and indebted country, and as had always been under our Government until 1873, and as the constitutional rights of our people required. The limitations were that the Secretary of the Treasury was ordered to purchase from $2,000,000 to $4,000,000 only of silver bullion per month, and coin the same, which coinage should be a legal tender, "except where otherwise provided by contract," thus limiting the amount of silver, and by limitation depreciating and discrediting it. It also enabled creditors to force gold contracts, and destroyed the legal equality of gold and silver coin. The country responded to this law—it being very much better than nothing—by an immediate advance in the values of property and by an active resumption of the industries of the country, which had been paralyzed and impoverished by lack of money necessary to maintain them in activity.

If such was the effect of the Bland-Allison Act, with its limitations and defects, what would have been the effect of laws providing for the free and unlimited coinage of silver as the law should have been? Certainly greatly increased productiveness and an easy, legal, and just liquidation of all our coin obligations. Our country thus would have been completely self-sustaining; European creditors would have had their debts paid by the exportation of our increased productions of all kinds, as well as by money, and we would not have needed the large sums we have borrowed from Europe. Defective as was the Bland-Allison law, our industries were so stimulated and sustained by it that our country was enabled to maintain financial and trade relations with Europe with little apparent disadvantage. Next, in the work of robbery by law, we had the treacherous and deceptive law of 1890. That law repealed the Bland-Allison Act and provided that the amount of silver to be purchased by the Secretary of the Treasury should be increased to 4,500,000 ounces per month. This increase was the bait on the hidden hook, with its sharp and ruthless barbs. Instead of the market price of silver, without limitation, as under the Bland-Allison Act, the law of 1890 fixed the price of 371¼ grains of pure silver at one dollar.

This law limited both the quantity of purchase and price of purchase. If silver were higher in the markets of the world than this law specified, then no silver was to be bought. Besides, the fraudulent parity clause was insidiously added. By the laws of disability placed upon silver, as compared with free and unlimited coinage of gold, no parity, or approach to parity, was a possibility. "Blunders are worse than crimes." Still our country flourished. Not, as it might have done, under laws providing for free and unlimited coinage of silver; but its prosperity was truly remarkable, as compared with present conditions of extreme depreciation in the values of property, the paralysis of business, and the enforced idleness of men seeking honest labor, and finding only poverty, from lack of employment. In 1892 the present unfortunate and inefficient Administration came into power. An early session of Congress was called, and an immediate attack was made upon our financial system by all the political forces of the Administration, inspired and aided by the leading presses of our metropolitan cities, and the combined money powers of Europe and their agents and associates in New York City. Under this onslaught the purchasing clause of the *act of 1890 was* repealed, and thus was eliminated the only thing of

real value in the law of 1890, while all the injurious provisions of the law remained in full force. Its repeal stopped all further supply of silver money to our debtor nation, much needing it. Though the purchasing clause was defective, it was better than nothing, left by its repeal. Besides, the Secretary of the Treasury construed the parity provisions of the law of 1890 as meaning the single gold standard. It was a construction giving robber profits to the great credit holders and money lenders of Europe and New York, at the expense of the debtor and industrial classes of the United States.

Not until the repeal of the purchasing clause of the law of 1890 stopping all new acquisitions of silver by our Government and people, and the gold construction of the parity clause of that law by the Secretary of the Treasury making gold our sole monetary standard, did the financial poverty of the country, unknown before, cause any American Administration, in time of peace, to go begging in European markets for loans of gold.

To sum up the situation: Is it not clear that but for the erroneous law of 1873 demonetizing silver; but for the law passed to retire greenbacks in 1875; but for the specific disabilities put upon silver and the specific favoritism to gold by the Bland-Allison law in 1878; but for the greater specific disabilities put upon silver and special favoritism of gold by the law of 1890, and but for the repeal of the silver-purchasing clause, the only thing of any value in the defective law of 1890; is it not clear that our many oppressive and destructive financial troubles would have been avoided and no bonds for the purchase of gold would ever have been required or issued, as has been done during the last two years?

Under such conditions is not the interest on bonds, issued and sold to buy gold, a premium on gold? Has not the occasion for issuing these bonds been the certain result of a succession of laws made against the property owners and business and laboring classes of the United States in the interest, and only in the interest, of the money lending classes of Europe and New York, who have substantially controlled the financial legislation of this country for the last thirty years?

Put down the principal of the bonds sold to buy gold, as stated in the Secretary's last report, page 57, $257,000,000, as money thrown away. Add to this the interest on this sum for thirty years, at 4 per cent, $308,000,000, as the premium on the gold bought by the bonds sold, and we have a direct cash loss to the country of $565,000,000; and add the recent loan of $100,000,000 and interest, making $220,000,000, and we have the total amount of $785,000,000.

Other issues of bonds for borrowing gold are now proposed. How much in the future no man knows.

This will be all loss to the people, and has been all gain to the money lenders in their past transactions. If present methods shall continue, this is only a short stopping place on the road to ruin. When will the work of impoverishing the people and enriching the money lenders cease? American voters must answer the question.

But this sum does not represent one-tenth of the injuries, impoverishments, arrested industrial developments, and legally enacted robberies the people of the United States have suffered in the last thirty years.

Ten billion dollars is not too large an estimate to make of our country's losses as the result of the law of 1866 for retiring the greenbacks, condemned and repealed in 1867; the law of 1873 demonetizing silver, condemned and *repealed in 1878; the* law of 1875, a second law to re-

deem and retire the greenbacks, condemned and repealed in 1878; the Bland-Allison silver law of 1878, denying free coinage, with its limitations of the amount of silver purchases and legalizing special gold contracts; the law of 1890, denying free coinage and limiting the price of silver, and the quantity to be purchased, and with adroit subtlety discriminating against silver by the parity clause, and also providing for special gold contracts; and the law of 1893, repealing the silver-purchasing clause of the law of 1890, suspending all increase of silver coin in the volume of the currency of our much-indebted and distressed people, then greatly lacking money. Nowhere in the United States did American manufacturers, merchants, farmers, mechanics, or laborers call for any of these laws. The nonproducing classes—credit holders and foreign money lenders, and their New York agents and associates—by adroit subtleties and the force of administrative tyrannies recklessly applied, procured the passage of the laws before referred to.

Our financial laws have been subtle and crafty traps and fetters, in which our people have been caught and cruelly held captive, to labor as slaves for idle and luxurious credit holders and money lenders.

While foreign legislation and foreign financial usages may, in a small degree, have been able to influence the monetary affairs of the United States, such influences have not been, nor could they be, controlling. Nothing but our own laws can in any material degree control us. Our own laws have done and are doing all the evils we have suffered.

Of the existing paralysis of the productive forces of the country, bankruptcies, poverty, and miseries resulting from a long series of blundering and erroneous legislation—now expressing itself in a gold standard without gold, except as bought by the sale of United States bonds, the gold to be again exported to Europe and again bought by the sale of bonds and again exported—the Secretary of the Treasury takes no heed; nor of the vast sums daily becoming due on European investments in this country, due to Europeans residing in Europe—over a million of dollars each day. The Secretary says our legal-tender notes (greenbacks) and Treasury notes do all this mischief of gold exportation, and the Secretary, for the third time in our history, advises their redemption in gold, to be obtained by the sale of bonds, and retirement and cancellation of all these notes, completely eliminating them from our financial system.

The Secretary advises that the United States as a whole people, already overwhelmed in debt, increase their debts by issuing $500,000,000 of interest-bearing bonds for the purchase of gold, such gold to be used to redeem and destroy the only reliable money our debtor country now possesses, or seems able to possess, outside of our limited amount of silver coin; limited, when we consider the vast amount of money required for 70,000,000 of highly developed people, occupying a country of almost continental vastness. The gold and silver money of our nation should be both full in amount and constant in supply—not less than $2,500,000,000 for our 70,000,000 of people. France, the best conditioned country financially in the world, has 40,000,000 people and $1,500,000,000 in gold and silver coin. France maintains gold and silver in use together because her laws give no preference to either. There are no special gold contracts, and no preference in any way given to gold. Thus France, surrounded by nations having the single gold standard, true to her own interests and rights, maintains the equal use of gold and silver coin. By the same methods the United States can do likewise.

The Secretary says gold is withdrawn from the country by means *of greenbacks and* Treasury notes, irrationally assuming that if green-

backs and Treasury notes did not exist the gold of the country could not be obtained for foreign exportation by creditors legally entitled to the gold. Under any system of national financial laws, greenbacks or no greenbacks, if gold exists in the country, the creditor classes can always obtain it for exportation or other use. Under present laws, when the gold goes abroad the greenbacks remain. If we had no greenbacks, and gold should be taken, then there would remain neither gold nor greenbacks. This would certainly be a greater monetary poverty than to have the greenbacks remaining, if redeemed, again to be used in the business of the country.

On the other hand, if without the greenbacks the gold of the country, if gold there be, could not be obtained by creditors entitled to the gold, such gold might as well not exist, for it would be without practical value under such inaccessible conditions. The theory is a strange mistake, and the result claimed is a palpable absurdity.

So largely debtor as we are, so limited and uncertain at the present time in our gold supply, so constantly liable to have our gold withdrawn from the country, millions of dollars, week by week, the greenback is the sheet anchor of our finances. It is far more valuable to us than gold under existing conditions, for gold is ours only for such time and such uses as our creditor masters permit. The greenback is a constant reality. Gold is only an uncertain supposition. Greenbacks have since their first creation been the indispensable, reliable friends of the people. As our money affairs now are, the loss of the greenbacks would be absolute inevitable financial and industrial ruin. A bottomless depth of bankruptcy would engulf the country.

The Secretary says there are in existence $346,000,000 of greenbacks. If $100,000,000 in gold be kept in the Treasury for their redemption, then there will remain $246,000,000 of costless free money for the use of the people. The other $100,000,000 can be used whether redeemed or unredeemed. Are there any persons whatever who would be benefited by the complete retirement of the greenbacks as a part of the currency of the country? Yes; the money and credit jobbers and wreckers would have the benefit of a more terrible panic than has ever heretofore occurred in this country, and their robber spoils would be proportionately great. But a universal ruin would devastate the United States.

All the nations of the earth in armed conflict against us could not financially and industriously harm us as much as, by unwise legislation we have harmed ourselves. Let, then, Americans protect American rights and all equitable American interests against the world. Thus will freedom preserve her glorious inheritance, and the highest results of civilization will be continued to future generations in America.

Some distinguished statesmen have expressed themselves as believing that the failure of national revenues to meet governmental expenses is the cause of all our national industrial depression and financial derangements, which necessarily include the purchase of gold by sale of United States bonds, and gold exportations. It is hard to discern in these things the relation of cause and effect. The Treasurer of the United States, in his report December 1, 1895, states the deficiency of revenue for the year 1895 at only $42,805,233.18. Even if a deficiency of income tended to cause bond sales and purchases of gold to cover the same, a deficiency of the above relatively small amount would not have caused the immense amount of bond sales—with recent sales amounting now to $357,000,000—and gold purchases and gold exportations that have been made.

The obvious and only possible cause for these derangements and deficiencies that have caused the large sale of bonds is the aggregate of $400,000,000, annually required to pay to Europeans residing in Europe, interest, dividend, and rental accounts on investments in the United States.

The continued sale of Government bonds for gold—the gold to be used in the liquidation of the above accounts—is no remedy for the evils of our condition. It is only an aggravation of our financial disease. To continue present financial laws, debtor nation as we are, means a sale of bonds every few months, with no stopping place, until the nation can carry no more bonds, and our people are taxed into slavery—such as the Egyptians are experiencing to-day on account of their debt to England.

Senator Sherman favors paying gold by the Treasury in redemption of greenbacks; the greenbacks thereafter to remain in the Treasury till gold shall be paid into the Treasury again to obtain the greenbacks. If this crafty scheme shall prevail, the greenbacks might as well be canceled at once. With our present financial system, and great annual dues in Europe, our condition will continually become worse. If the greenbacks are ever in the Treasury, to remain there till gold shall be paid for them, greenbacks will never again be paid out. They would be forever lost to the country.

The effects of the present monetary system and limited supply of money are very different upon the different classes of our people.

Money and creditor capitalists profit by it; manufacturers and merchants lose their profits; laborers suffer by loss of employment and lowered wages.

Mortgage-indebted farmers and other home owners find their debts doubled, as measured by the lessened value of farm productions and the average losses of wage earnings.

According to the census of 1890 there were in Illinois 126,250 persons—farmers and others—owning their homes, on which mortgages existed to the amount of $177,476,698. The depreciated farm products and the depreciated returns of labor employed and losses by the unemployed have reduced incomes over one-half since 1873 and about 20 per cent since 1890. This is just so much added to the sum of their mortgage debts, as measured by farm products and labor ability to pay them.

The people who are so injuriously and so oppressively affected are the most important of all. They are the foundation elements of our nation, as determined by the results of their occupations, by intelligence, and by moral worth.

In Indiana the number of farmers and others whose homes were mortgaged was, in 1890, 79,853. The amount of the mortgage debts was $66,718,240. By virtue of the causes named as to Illinois, the present mortgage debts of the home owners in Indiana—$66,718,240—have been increased in the same ratio.

In Ohio, by the census report of 1890, the number of farm and other home owners whose homes were mortgaged was 123,423. The amount of these home mortgages is stated at $131,890,072; but in fact it is away above and double that figure by reason of the shrinkage in prices referred to.

In Pennsylvania the number of farm and other home owners whose farms and homes were mortgaged, as stated by the census of 1890, was 136,595. The amount of mortgage-secured debts on farms and other *homes was* $211,691,210. At the present half-price values of farm

products and wages of labor, as compared with 1873, these debts are equal to $423,382,420.

According to the census of 1890 the whole number of persons in the United States, including farmers and others, whose homes were mortgaged was 1,696,890. The aggregate of all the mortgages on the homes of the people of the United States was $2,132,949,568.

By the reduction of the value of farm products, by the reduction of the prices of labor, and by the actual loss of labor by lack of employment, twice the amount of farm products and twice the labor forces are required to pay the above large aggregate of home mortgage indebtedness as was required in 1873, which has been equivalent to making the aggregate of home mortgage indebtedness in the United States at this present time the enormous sum of $4,265,899,126. No wonder our nation is wrenched and shaken to its very foundations. Hundreds of thousands of mortgaged homes have been lost to the owners as the result of United States laws appreciating the value of money and depreciating the values of property.

In far-away India exists the great and muddy river Ganges, which is infested with enormously large crocodiles, cruel and voracious beasts. The priests of the Hindoo religion taught the people that these repulsive monsters were sacred animals; and further taught the loving mothers of India that children devoured by the sacred crocodiles became sanctified, and were assured of a happy and endless beatitude. With tender care, with sighs and tears at the parting from their little ones, these loving mothers voluntarily fed these dear objects of their affection into the gaping mouths of the voracious saurians.

In recent years the worship of a cruel god of gold has been established in Europe and in the United States of America, as the object of idolatrous, unholy worship. The temples in which the sons of Mammon teach the doctrines of the single gold standard, and sing pæans in praise of this God of Lucre, are to be found in the banking houses of the great cities and in the editorial rooms of all, or nearly all, the metropolitan newspapers, which papers are controllingly owned by money lenders.

Our Government occupies, by virtue of its duties and powers, a parental relation to our people. Its beneficent office is to promote the interests of labor, cherish American industries, maintain the values of property, develop our prosperity, and elevate our civilization.

As the Hindoo mothers, loving but mistaken, fed their children to crocodiles, and the children perished while the crocodiles thrived, so our parental Government has mistakenly fed our labor, our industrial establishments and properties, our prosperity and our civilization—the sweet offspring of our free institutions and the Christian religion—to the gold crocodile—a crocodile as voracious as that of the Ganges, and as honest as is that hideous reptile.

The term "sound" money, as applied to gold, must have been selected in irony and derision.

The people at large do not handle gold. They do not even see it. To them it is but a name, a mere "sound." By persistent misstatements of historical facts in regard to the demonetization of silver the people of the United States have been made to believe that the different nations of Europe first demonetized silver, and that by reason of the close commercial and financial relations between European nations and the United States the latter have been actually compelled to imitate Europe and also demonetize silver, and that the United States can not remonetize it except *the nations of Europe*, by international agreement,

also join in the work of remonetization; when the truth is the United States led the way in this work of monetary error, which is now universally conceded to have been a tremendous blunder.

Senator Sherman, of Ohio, on the 6th day of January, 1868, introduced in the United States Senate a coinage bill which expressly provided for the discontinuance of the coinage of the silver dollar, at that time the only full legal-tender silver coinage the laws of the United States provided for. (See section 2 of said Senate bill.) June 9, 1868, Senator Sherman reported this bill favorably, and advised its passage. He then said: "The single gold standard was an American idea." Mark well this last expression. It was an "American," not a "European" idea, at that time. On the United States rests the blame for initiating the legislation to demonetize silver.

The opposition to this bill in the United States Senate was so earnest that it was never called up for action.

This bill was introduced in the United States Senate but two years after the close of our great civil war, which had left the nation overwhelmingly in debt, and neither gold nor silver was in circulation. April 28, 1870, Senator Sherman introduced in the Senate a second bill to demonetize silver—the bill which became a law February 12, 1873; a bill concerning which the Director of the Mint said, "it virtually demonetized silver." (See his report of 1893, page 24.)

No nation in Europe had moved legislatively for the demonetization of silver when Senator Sherman introduced his two separate bills in the United States Senate—one in 1868 and the other in 1870—to omit the silver dollar from the coinage laws of the country. The dollar was then the only full legal-tender silver coin in the United States. All other silver coins were limited as legal tender to $5.

Germany, December 4, 1871, passed laws providing for gold coinage, but did not pass any law demonetizing silver until July 9, 1873. Germany's law for the demonetization of silver was enacted nearly five months after the United States had cast off the dollar of our fathers. Some other European nations followed, by legislation, demonetizing silver.

The authority for the statement heretofore made as to the action and time of action of Germany in demonetizing silver is to be found on pages 18 and 19 of the reports of the English Parliamentary committee, appointed March 3, 1876, "to consider and report upon the causes of the decline of silver."

No nation in Europe demonetized silver till after the law of the United States, passed in 1873, had done its fatal work.

The United States began this demonetization in 1868, renewed it again in 1870, and finally passed the law in 1873.

Let it no more be said that the United States must wait upon European legislation before our Government can begin the work of remonetizing silver. As we led the way to demonetization, so can we the more easily lead the way to silver's remonetization. Let us hasten our work, as all the property, all the industries, and all the labor, in Europe and the United States, are suffering by the tyranny and spoliation of the single gold standard.

The Director of the Mint, in his report, page 179, October 17, 1893, says the products of the precious metals in the world from 1792 to 1892—one hundred years—were:

Gold	$5,663,908,000
Silver	5,077,961,000
Gold excess	585,947,000

On page 53 of the report of 1894 the Director of the Mint states the coinage of the world in the years 1891, 1892, and 1893 to have been—

Gold	$524,892,914
Silver	429,201,467
Excess of gold coinage	95,691,447

In view of these statistical reports, taking the world as our field of view, what becomes of the *alleged* fact that the world is overstocked with silver as compared with gold, and that it must be demonetized in order that its excessive quantity may not derange values and embarrass finances?

Reports of an embarrassing excess of silver, industriously and incessantly pressed upon the attention of the country and largely believed, are among the lying devices by which gold monometallists have been enabled to deceive the people of the United States.

By the reports of the Director of the Mint just quoted, the allegations made to the public by the gold monometallists, that silver is overvalued in the markets of the world, is proved to be wholly untrue. If the valuation of silver in respect to gold is at all erroneous, it is undervalued.

A great effect was produced in aid of legislation to repeal the purchasing clause of the silver law of 1890 by emphatic and authoritative assertions that in India the "governor-general in council," June 26, 1893, had established the single gold standard and demonetized silver, and that, as India was the greatest silver-using country in the world, we should surely be flooded by tremendous hoards of nearly worthless silver bullion and coin.

This was wholly untrue; but the falsehood aided in repealing the silver-purchasing clause of the law of 1890.

What are the facts? Gold is not a legal tender in India. Silver is still, as it has been for the last twenty years, full legal-tender money. Besides, silver in India has the highest ratio to gold of any country in the world.

In India 15 ounces of silver coin equal in value 1 ounce of gold. In the United States it takes 16 ounces of silver coin to equal 1 ounce of gold. (See page 323 of the Report of the Director of the Mint for the year 1894.) The India mints were closed to the coinage of silver on personal account only. The Government now buys coin and coins silver without legal limit.

By the last-named report the net imports into India of silver were for the fiscal year 1892–93, $60,934,726; for the fiscal year 1893–94, $65,177,676; and such imports have been large to the present time. Since the act of 1893 stopping all increase of silver in the United States India has got our silver, and according to all accounts is thriving immensely, while the people of the United States, not having sufficient money to pay their debts and transact their business, are rapidly decreasing in all their labor and industrial developments and are becoming poorer each day, and are almost helpless debtors to the gold monometallists in Europe.

The average ratio of silver to gold in all the silver and gold-using nations in the world is about and does not exceed 15½ to 1. We, with our ratio of 16 of silver to 1 of gold, value gold higher and silver lower than is the world's average of ratio.

An immediate enactment of laws for the free and unlimited coinage of silver and gold, at the ratio of 16 to 1, is the only salvation of our almost helpless debtor country. There is but this one road to safety. It is no sentimental question of "sound money, or honest money, or as

good as the best in the world." Words of sentiment, in the expression of which all practical considerations are lost sight of, have no application to our distressing necessities. There is no room for choice. The earnest question is, Will the Government of the United States use its sovereign powers for the benefit of the people of the United States, now sorely needing wise and patriotic legislation, no matter what other nations may do or may not do? Their affairs are their own; our affairs are our own—to be managed for ourselves in a practical way to relieve present distresses and avoid future ones. "What can we do to be saved?" is what our people are now asking.

A money system of the highest utility, not in foreign countries, but for the people of the United States, is for us the "honest, sound, and best money," and there is no other. It is entirely a practical question, and relates to the people, and to no class, and gives no preferences.

All the silver-mine owners in the United States are not so much interested in the remonetization of silver as are the farmers in either of the States of Illinois, Indiana, or Ohio, as statistics will fully prove. The farmers and laboring men in the United States are forty times as much interested in the remonetization of silver as are all the silver-mine owners in the United States.

The patriots of the American Revolution published to the world a Declaration of Independence and established a free Government for the United States.

But the recent financial laws of the country have surrendered that independence, once our pride, our boast, and happiness; and we have assumed by our own act the humble and degraded lot of dependence and bondage to a combination of money lenders. Voluntary slaves of home and of foreign money kings, our degradation and misery are complete. Labor is in beggary; property values are in ruins; national decadence has begun its deadly rot, which will lead to ultimate destruction, unless the people in the United States at the ballot box shall redeem themselves and save the prosperity and freedom of their country.

ANSON WOLCOTT, *Indiana.*

54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 178.

IN THE SENATE OF THE UNITED STATES.

MARCH 19, 1896.—Referred to the Committee on Appropriations and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ACTING SECRETARY OF THE TREASURY, TRANSMITTING, IN RESPONSE TO SENATE RESOLUTION OF MARCH 16, 1896, REPORT RELATIVE TO THE CLAIMS OF CERTAIN INSURANCE COMPANIES.

TREASURY DEPARTMENT, *March 18, 1896.*

SIR: In obedience to Senate resolution of the 16th instant, I have the honor to report the claims therein referred to as follows:

Settlement No. 4813:	
To the Sun Mutual Insurance Company, New York	$5,860.00
To the Commercial Mutual Insurance Company, New York	2,441.67
To the Atlantic Mutual Insurance Company, New York	5,860.00
To the assignees of Washington Marine Insurance Company, New York	4,500.00
Total	18,661.67
Settlement No. 9657:	
To the assignees of Washington Marine Insurance Company, New York	5,000.00

Respectfully, yours,

S. WIKE, *Acting Secretary.*

The PRESIDENT OF THE SENATE.

54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 179.

IN THE SENATE OF THE UNITED STATES.

MARCH 20, 1896.—Referred to the Committee on Appropriations and ordered to be printed.

The VICE-PRESIDENT presented the following:

LETTER FROM THE ACTING SECRETARY OF THE TREASURY SUBMITTING AN ESTIMATE OF APPROPRIATION TO PAY THE SALARY OF THE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF UTAH.

TREASURY DEPARTMENT,
March 19, 1896.

SIR: At the instance of the Attorney-General I have the honor to submit an estimate of appropriation for inclusion in legislative, executive, and judicial appropriation bill, now pending, to pay the salary of the United States district judge for the district of Utah for the fiscal year 1897, authorized by the act of July 16, 1894 (28 Stat. L., p. 110, sec. 14), $5,000.

Respectfully, yours,

S. WIKE, *Acting Secretary.*

The PRESIDENT OF THE SENATE.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 180.

IN THE SENATE OF THE UNITED STATES.

MARCH 23, 1896.—Laid on the table and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE SECRETARY OF THE TREASURY, TRANSMITTING, IN RESPONSE TO SENATE RESOLUTION OF MARCH 16, 1896, COPIES OF INSTRUCTIONS ISSUED FROM THE TREASURY DEPARTMENT RELATIVE TO THE SEIZURE OF VESSELS OF THE UNITED STATES LOADED WITH ARMS AND MUNITIONS OF WAR, WITH PASSENGERS ON BOARD, SUSPECTED TO BE DESTINED FOR FOREIGN PORTS, ETC.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 18, 1896.

SIR: I have the honor to acknowledge the receipt of the resolution of the Senate, dated the 16th instant—

> That the Secretary of the Treasury be directed to inform the Senate what orders have been issued from the Treasury Department to seize vessels of the United States loaded with arms and munitions of war, with passengers on board, suspected to be destined for foreign ports, and under what authority of law such seizures and arrests have been made.

As a reply I transmit herewith copies of instructions which have been given by this Department, relative to the matter, under Title LXVII, Revised Statutes of the United States.

Respectfully, yours,

J. G. CARLISLE, *Secretary.*

The PRESIDENT OF THE SENATE.

TREASURY DEPARTMENT,
Washington, D. C., July 14, 1894.

To Collectors of Customs and others:

This Department is advised by the Secretary of State that he has received a communication from Dr. Guzman, Nicaraguan minister at this capital, stating that an insurrection exists in the Mosquito Strip, participated in by Americans, and that the Government of Nicaragua fears the insurgents will be aided by the arrival of men from the United States.

Your attention is invited to the neutrality laws embodied in the Revised Statutes of the United States, Chapter LXVII, and you are instructed to cause their observance in your district, and to detain any vessel departing or attempting to depart from the United States in contravention of the provisions of said statutes.

W. E. CURTIS, *Acting Secretary.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., April 15, 1895.

SIR: You are directed to take on board the revenue steamer *Morrill* supplies of fuel, provisions, and water, and proceed with your command to Key West, Fla., with all possible dispatch, and report to the collector of customs for temporary duty on that station. Lieutenant Willey, commanding the revenue steamer *McLane*, which vessel is at present at Tampa, has been directed to communicate to you by letter at Key West the special nature of the work he has been doing. It is expected that you will be exceedingly vigilant in the performance of duty in the enforcement of the neutrality and customs laws. Upon the return of the *McLane* to Key West you will immediately proceed with your command to Charleston and resume your regular duties on that station.

You will acknowledge the receipt of this order, and advise the Department by telegraph of the dates of your departure for and arrival at Key West; also the dates of your departure therefrom and arrival at Charleston.

Respectfully, yours,

C. S. HAMLIN,
Acting Secretary.

Capt. J. A. SLAMM,
Commanding Revenue Steamer Morrill, Charleston, S. C.

(The portion of this letter regarding Lieutenant Willey relates to the quarantine and navigation laws.)

TREASURY DEPARTMENT,
Washington, D. C., June 11, 1895.

SIR: I transmit herewith, for your information and guidance, a copy of a circular letter dated June 11, 1895, signed by the Acting Secretary of the Treasury, relative to the enforcement of the neutrality laws.

Respectfully, yours,

E. T. CHAMBERLAIN, *Commissioner.*

COLLECTOR OF CUSTOMS,
Beaufort, N. C.

(Similar letter to all collectors of customs from New York to Brownsville.)

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., June 11, 1895.

To Collectors of Customs and others:

It is a matter of rumor and report that at various points in the United States attempts are making to enlist men, to equip and arm vessels, and by other illegal measures to aid the insurrection now in progress in the Island of Cuba. While this Department has not been furnished with tangible evidence confirmatory of such rumors it deems it of great importance that no possible opportunity be given for complaints that the Government of the United States has in any respect fallen short of its full duty to a friendly nation. Collectors of customs for the several districts between New York and Brownsville are especially enjoined to see to it that the neutrality laws of the United States, particularly sections 5289 and 5290 of the Revised Statutes, are fully complied with.

Respectfully, yours,

S. WIKE, *Acting Secretary.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., July 19, 1895.

SIR: Your command is hereby assigned to temporary duty on the coast of Florida with headquarters for pay, rations, and fuel at Cedar Keys, and cruising grounds from that point south to Tampa, and upon receipt of this order you will proceed with the *Morrill* to the cruising grounds assigned you.

In addition to your regular duties under the customs and navigation laws, you are directed to pay strict attention to the enforcement of the neutrality laws and to lend all aid possible with your command to the United States Marine-Hospital Service in the rigid observance by all concerned of the United States quarantine regulations. * * *

Respectfully, yours,

J. G. CARLISLE, *Secretary.*

Capt. W. H. ROBERTS,
Commanding Revenue Steamer Morrill, Charleston, S. C.

(Similar letters sent to commanding officers of steamers *McLane*, *Winona*, and *Forward.*)

(The remaining portion of this letter relates exclusively to quarantine matters.)

[Telegram.]
TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., August 3, 1895.

COLLECTOR OF CUSTOMS,
Key West, Fla.:

You can not fine steamer *George W. Childs* for violation section 4266, Revised Statutes, which was repealed by act August 2, 1882. Advise further with United States attorney.

S. WIKE, *Assistant Secretary.*

[Telegram.]
TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., August 7, 1895.

COLLECTOR OF CUSTOMS,
Key West, Fla.:

Case steamer *George W. Childs* referred to Attorney-General. Hold vessel for further instructions.

S. WIKE, *Assistant Secretary.*

[Telegram.]
TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., August 19, 1895.

COLLECTOR OF CUSTOMS,
Key West, Fla.:

Upon the application of the owner, supported by the affidavit of the captain and other officers of the steamer *Childs*, the Department concludes to remit the fine incurred provided a certificate of probable cause of seizure and the original of the affidavit indicated be filed with you, whereupon you are directed to release the vessel.

S. WIKE, *Assistant Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., August 24, 1895.

COLLECTOR CUSTOMS,
Key West, Fla.:

Report by telegraph present condition case steamer *George W. Childs*, whether she continues in your custody, and where she is.

S. WIKE, *Assistant Secretary.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., August 27, 1895.

COLLECTOR OF CUSTOMS,
Key West, Fla.:

SIR: Referring to your telegraphic report dated the 24th instant, relative to the steamer *George W. Childs*, this Department has to state that it is considered desirable that a careful watch be kept of her movements and that, should there be any violation on her part of the neutrality laws, proper action be taken by the Government in the matter without delay.

You will please be governed accordingly, reporting from time to time any facts which should be known to the Department regarding the case.

Respectfully, yours,

S. WIKE, *Assistant Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., August 30, 1895.

COLLECTOR CUSTOMS,
Philadelphia, Pa.:

Reported armed expedition left Wilmington, Del., last night. Direct commanding officer *Hamilton* get under way immediately, proceed to that port, confer with collector there, and await further orders. Acknowledge receipt.

W. E. CURTIS, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., August 30, 1895.

COLLECTOR CUSTOMS,
Wilmington, Del.:

In connection with the armed expedition reported to have left Wilmington last night, the revenue cutter *Hamilton*, at Philadelphia, has been ordered to report to you immediately and the naphtha launch at the quarantine station at Delaware Breakwater can be used by the deputy collector at Lewes, if desired, on his application to the medical officer *in command of* the quarantine station at that place.

W. E. CURTIS, Acting *Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., August 31, 1895.

Captain BLAKE,
Revenue Steamer Hamilton, Wilmington Depot, Del.:

Confer with authorities and if necessary for *Hamilton* to remain; order rations shipped from Philadelphia.

W. E. CURTIS, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., September 18, 1895.

COLLECTOR CUSTOMS,
Key West, Fla.:

Take special precautions to prevent any violation of neutrality laws and bring to justice any persons engaged in such violations. Consult United States attorney. Alleged that schooner *Lark* seized is part of extensive plan of filibusters, and that Cedar Keys, Palm Beach, and neighborhood, and keys near Key West are dangerous points.

C. S. HAMLIN, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., September 18, 1895.

COLLECTOR CUSTOMS,
Key West, Fla.:

Report case suspected filibustering, schooner *Lark*, mentioned in your telegram 7th instant, to United States attorney. Matter has been brought to attention Attorney-General.

C. S. HAMLIN, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., September 18, 1895.

COLLECTOR CUSTOMS,
Tampa, Fla.:

Take special precautions to prevent any violation of neutrality laws, and bring to justice any persons engaged in such violations. Consult United States attorney. Alleged that schooner *Lark* seized is part of extensive plan of filibusterers, and that Cedar Keys, Palm Beach and neighborhood, and keys near Key West, are dangerous points.

C. S. HAMLIN, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
BUREAU OF NAVIGATION,
Washington, D. C., September 18, 1895.

COLLECTOR OF CUSTOMS,
Key West, Fla.:

The steamers *Winona* and *McLane*, to prevent filibustering expedition. *Morrill* if necessary.

C. S. HAMLIN, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., September 19, 1895.

COLLECTOR CUSTOMS,
Wilmington, N. C.:

Report case steamer *Commodore* to United States attorney immediately. Attorney-General advised of this action.

C. S. HAMLIN, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., September 20, 1895.

COLLECTOR CUSTOMS,
Key West, Fla.:

Report case *Antonette* to United States attorney.

C. S. HAMLIN, *Acting Secretary.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., September 20, 1895.

COLLECTOR OF CUSTOMS,
Fernandina, Fla.:

SIR: I transmit herewith a copy of a note of the 12th instant from the British chargé d'affaires ad interim at this capital relative to a quantity of arms, ammunition, etc., stated to have been found on an uninhabited island known as Grassy Cay, off the south edge of Andros Island in the Bahama group.

You will notice that the chargé d'affaires desires to be informed especially by whom and by what vessel these munitions of war were shipped and illegally landed.

Please forward to the Department any information upon the subject you may be able to obtain.

A similar letter has been addressed to other collectors of customs.

Respectfully, yours,

C. S. HAMLIN, *Acting Secretary.*

(Similar letter to Charleston, Savannah, Brunswick, Apalachicola, Pensacola, St. Augustine, Jacksonville, Key West, Cedar Keys, Tampa.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., September 23, 1895.

COLLECTOR CUSTOMS,
San Francisco, Cal.:

State Department communicates report from Mexican consul-general at San Francisco, that the four-masted schooner *Satana* was on the 10th instant being repaired and fitted out at Oakland to carry an expedition to Lower California to take forcible possession of certain property claimed by Friers and Bethune, the title to which is in litigation. Consult district attorney, and take necessary steps to prevent violation of laws. Report by wire.

C. S. HAMLIN, *Acting Secretary.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., October 11, 1895.

SIR: Referring to your report of the 27th ultimo in the case of the vessel *Satana*, I transmit herewith a copy of a note from the Mexican minister, received through the Department of State, in which he replies to information given him regarding the *Satana*, that the consul-general of his Government has ascertained that there is question of an expedition "being formed in some other vessel" to attempt to take possession of the island of Guadaloupe.

You will please consult with the United States attorney with a view to the taking of any measures necessary to prevent a violation of the laws governing the matter.

Respectfully, yours,

S. WIKE, *Assistant Secretary.*

COLLECTOR OF CUSTOMS,
San Francisco, Cal.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., October 8, 1895.

COLLECTOR OF CUSTOMS,
New Orleans, La.:

State Department announces that leaders and considerable number of men left the Keys, that *Cincinnati* is in port, that the *Woodall* is about to start from New Orleans conveying the party, and that the *Childs*, probably now in Key West, is preparing to sail. The Spanish consul in Tampa reports expedition is now at Pine Reef.

Consult United States attorney and officers of nearest revenue cutters to prevent apprehended violations of neutrality laws of the United States.

S. WIKE, *Acting Secretary.*

(Similar telegram to collector of customs, Tampa, Fla., and Key West, Fla.)

OFFICE OF THE COLLECTOR OF CUSTOMS,
New Orleans, La., October 12, 1895.

SIR: I desire now to communicate at more length than I have had an opportunity previously to do relating to the subject-matter of your telegram of the 8th instant, especially so far as it relates to the steamer *James Woodall*, now at this port.

The *James Woodall*, an ocean tug of nearly 90 tons net tonnage, arrived here August 7 last, with consular bill of health and manifest from the port of Progresso, Mexico, having cleared for that port from Baltimore. Shortly after her arrival here statements were made in some of the newspapers that she had conveyed arms and ammunition to the insurgents in Cuba before reaching Progresso, and the conflicting and improbable statements of the master of the vessel regarding his business at the port of Progresso gave a good deal of color to the statements which had been published in the newspapers.

The Spanish consul, or his son, called to see me several times to make complaints against the *Woodall* of intended violations of the neutrality laws, and I placed the vessel under close surveillance and have kept her so since her arrival. She has been thoroughly repaired while here, and is now lying on the Algiers side of the river in charge of an engineer, but without stores or crew and with only a small quantity of coal on board.

After receiving the Department's telegram alluded to, as the cutter *Smith*, at this port, was not seaworthy, I requested the collector at Bay St. Louis to hold the revenue cutter *Seward* in readiness to proceed to Port Eads in case she should be needed, but as that vessel was at Mobile, I have since written him to countermand the request. I also communicated such intelligence as I possess to the collector of customs at Key West, Fla. In addition to this, I have had several consultations with United States Attorney Earhart, who has given the subject thorough consideration. I have also instructed the commanding officer of the revenue cutter *Smith*, at this port, to place his vessel in the immediate vicinity of the *Woodall*, and have given him detailed instructions to prevent the violation of the neutrality laws.

In addition to going over this matter carefully with the United States attorney, I have also made a careful study of the decision in the *Itata* case, which the Department of Justice has cited as a guide for the action of the United States attorney. This case is not altogether similar to the case of the *Woodall*, but there is a case cited in that decision which is almost identical with that of the *Woodall*, provided, as seems likely, this vessel was engaged in carrying arms and ammunition to the Cuban insurgents before reaching the port of Progresso. In the case of the Florida (4 Ben., 452) the court said:

> Admitting that persons acting as agents of the insurrectionary party in Cuba were the real owners of the vessel and her cargo of arms and munitions of war, and that the transaction of the borrowing by Darr from Castillo of the money wherewith the vessel and her cargo were purchased was a sham, and that the vessel was to proceed with her cargo to Vera Cruz, and there the vessel and cargo were to be transferred by Darr, their nominal owner, to persons acting for the insurrectionary party in Cuba, and that thence the vessel was to take the cargo to some point off the coast of Cuba and land it on the shore by the use of rafts made out of the lumber on board, towed by the steam launch on board, through shallow water to the shore, and that Darr and such real owners of the vessel and cargo had intent to do all this in fitting out the vessel and putting her cargo on board, still a violation of the third section of the act of 1818 is not thereby made out. A vessel fitted out with intent to do this is not fitted out with intent to cruise or commit hostilities, within the sense of that section. * * * There is no satisfactory evidence that the vessel was *furnished or fitted out* or armed, or attempted to be furnished or fitted out or armed, *with intent that she* should be employed to cruise or commit hostilities, in the sense

of the third section of the act, in the service of the insurrectionary party in Cuba against the Government of Spain. There is no evidence that she was intended to do anything more than transport her cargo to the coast of Cuba, and cause it to be landed there on rafts, by the aid of the steam launch on board. To do this was no violation of the third section of the act, which is the one on which the libel is founded.

A similar ruling was also made by the Treasury Department March 24, 1885 (S. S. 6813), in letter addressed to the collector of customs at New York, in which Secretary Manning said:

Your letter of the 23d instant submits for the decision of the Treasury Department the question as to how far you would be justified in refusing clearance for arms and ammunition destined for the use of insurgents against a friendly nation, or in detaining them, or the vessel on which they are laden, in the absence of instructions from the Department, the question being suggested by its recent orders in the matter of vessels suspected of being engaged in transporting arms and ammunition in aid of insurgents against the Government of the United States of Colombia.

You will observe the practice hitherto followed, as you allege, by your office—that is, to allow them to be shipped as legitimate articles of commerce where they are not associated with a war vessel or an expeditionary force. But when there are strong reasons to suspect an intended violation of the neutrality laws, you might withhold clearance until notice of the intended shipment were brought to the consul of the nation against whom such arms were intended to be used, if such a consul should be at your port. It is evident that no definite rule applicable to all cases can be given, the limits of the interference of a collector being substantially defined in section 5290, Revised Statutes.

It is evident on inspection that the *Woodall* is in no sense of the word a "war vessel;" neither does it seem likely that she conveyed to Cuba any "expeditionary force." She left Baltimore on or about July 6, 1895. The shipping articles, signed July 2, state that she was about to clear from Baltimore to "Progresso and other Mexican and Central and South American ports as far south as Orinoco River, for a term not to exceed two calendar months. The term of service may be extended by mutual consent." Fourteen men, all told, shipped besides the captain. Of those who originally signed the shipping articles four failed to appear, and their places were supplied by four others July 5. The names signed before the shipping commissioner in Baltimore corresponded exactly with the names and signatures of those paid off before the United States shipping commissioner at this port, with the exception of one additional man, a Mexican shipped at the port of Progresso, Mexico, at a nominal salary. Therefore, whatever arms or munitions of war she may have carried, it seems evident that the *Woodall* did not convey any "expeditionary force" from her place of departure, Baltimore.

In my opinion this vessel has not violated any of the sections of the Revised Statutes relating to neutrality, even if she did carry arms and ammunition to the Cuban coast. Under the decisions referred to, especially that of Secretary Manning, I do not think that this office has authority to seize or even detain the vessel, except for a limited period, if her papers are regular, even should she be loaded with arms and ammunition for the insurgents in Cuba, provided they were not associated with an "expeditionary force;" and the shipment of a crew, proportioned to the size of the vessel and necessary for her proper navigation, would not seem to me to constitute an "expeditionary force." Anyone engaging in such business, of course, forfeits his right to protection by our Government, and runs the risk of capture by Spanish war vessels. Blockade runners, whether British or American, took the same risk when they ran the blockade from Nassau and other ports during the late war. It may be well to recall at this point that the Geneva Tribunal *gave awards* for the damage done by armed

cruisers fitted out in England, but I am not aware that any damages were ever awarded for the acts of blockade runners and the enormous services they rendered the Confederate cause.

On account of the importance that seems to have been attached to this case, I have caused the Government to be put to some expense in watching this vessel. I have had the revenue cutter keep strict surveillance over her, and the United States attorney now has men from the United States marshal's force watching her also.

I have endeavored to give every possible attention to the reports of the Spanish consul here, but up to this time information furnished by him has been unreliable and on investigation not substantiated. I see no probability of the *Woodall* while in this port violating the neutrality laws as construed in the decisions cited. Unless otherwise instructed by the Department, I shall not refuse clearance or interfere with her if she takes cargo of any character whatever, even if a portion of it should consist of arms and ammunition, but before issuing her papers, or returning her certificate of registry, which is now in possession of this office, I shall promptly notify both the Department and the Spanish consul that the vessel is about to depart.

Requesting that I may be promptly advised, by wire if possible, whether my position on this subject is correct, I am,

Respectfully, yours,

THEO. S. WILKINSON, *Collector.*

Hon. JOHN G. CARLISLE,
Secretary of the Treasury, Washington, D. C.

DEPARTMENT OF JUSTICE,
Washington, D. C., October 15, 1895.

SIR: I beg to acknowledge the receipt of your letter of October 14, transmitting a copy of a letter from the collector of customs at New Orleans, relating to the steamer *James Woodall.* The collector appears to take a correct view of his duty in the matter, upon the facts as stated by him. When you wire him please suggest that he consult with the officers of this Department, so that there may be harmony of action.

Very respectfully,

JUDSON HARMON, *Attorney-General.*

The SECRETARY OF THE TREASURY.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., October 16, 1895.

COLLECTOR OF CUSTOMS,
New Orleans, La.:

Your position as to the shipment of arms is approved by the Department. If Spanish consul should inquire concerning the contents of manifest or departure of vessel, it will be proper to give him the information.

J. G. CARLISLE, *Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., October 16, 1895.

COLLECTOR CUSTOMS,
New Orleans, La.:

Referring to your letter 12th instant, and to Department's telegram to-day, case steamer *James Woodall*, Attorney-General requests that you consult with officers Department Justice, so as to assure harmony of action.

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 15, 1895.

COLLECTOR CUSTOMS,
New York, N. Y.:

Secretary State requests this Department to take such instant and appropriate action as is necessary to vindicate the neutrality laws in the case of the steamer *Laurada*, supposed to have landed a hostile expedition from the United States in Cuba.

If the vessel arrive in your district, you will please take measures for her detention, and report facts to this Department without delay. Consult United States attorney.

C. S. HAMLIN, *Acting Secretary.*

(Similar telegram to collectors at Charleston, Savannah, Fernandina, Brunswick, Beaufort, N. C., Norfolk, Newport News, New Bedford, Baltimore, Annapolis, Crisfield, Boston, Philadelphia, Wilmington, Del., Newark, Perth Amboy, Tuckerton, Somers Point, Bridgeton, Trenton, Jacksonville, and Portland, Me.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 15, 1895.

COLLECTOR OF CUSTOMS,
Wilmington, Del.:

SIR: Referring to a telegram from this Department of this date relative to the steamer *Laurada*, I transmit herewith for your further information a copy of a note dated the 14th instant, from the Spanish minister at Washington concerning the vessel.

You may communicate upon the subject with any officer of a revenue cutter in your vicinity, with a view to such assistance from him as may be necessary and proper.

Respectfully, yours,

C. S. HAMLIN, *Acting Secretary.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 15, 1895.

COLLECTOR OF CUSTOMS,
Philadelphia, Pa.

SIR: Referring to a telegram from this Department of this date, relative to the steamer *Laurada*, I transmit herewith for your further information a copy of a note dated the 14th instant, from the Spanish minister at Washington concerning the vessel.

You may communicate upon the subject with any officer of a revenue cutter in your vicinity, with a view to such assistance from him as may be necessary and proper.

Respectfully, yours,

C. S. HAMLIN, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 16, 1895.

COLLECTOR CUSTOMS,
Charleston, S. C.:

Referring to telegram yesterday, relative to steamer *Laurada*, collector customs, Philadelphia, states that he is advised by Maritime Exchange that she has just arrived at your port. Take measures as directed in yesterday's telegram for detention vessel, and report by telegraph.

C. S. HAMLIN, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 22, 1895.

E. R. SHARP,
Deputy Collector Customs, Lewes, Del.:

Schooner *James W. Foster* expected to unlawfully embark men, arms, and ammunition for Cuba, to be transferred to her by tugs. She is now lying at Delaware Breakwater. She may endeavor to take dynamite from Thompson Point, opposite Chester. She cleared from Philadelphia for Tampa yesterday.

Spanish ambassador requests examination of vessel at Delaware Breakwater. Detain her, investigate, and report, if she is in your district. Use Marine-Hospital Service boat by you is hereby authorized. Report your action.

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 22, 1895.

COLLECTOR CUSTOMS,
Delaware Breakwater, Del.:

Schooner *James W. Foster* expected to unlawfully embark men, arms, and ammunition for Cuba, to be transferred to her by tugs. She is said to be lying in Delaware River. She may endeavor to take dynamite from Thompson Point, opposite Chester. She cleared from Philadelphia for Tampa yesterday.

Spanish ambassador requests examination vessel at Delaware Breakwater. Detain her, investigate, and report, if she is in your district. If necessary request use Marine-Hospital Service boat.

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 22, 1895.

COLLECTOR CUSTOMS,
Tampa, Fla.:

Schooner *James W. Foster* cleared yesterday from Philadelphia for your port. Fears entertained that she will take men, arms, ammunition, and dynamite, to be transferred to the Norwegian steamer *Leon* on the high seas. On arrival schooner, investigate; communicate with United States attorney, if necessary, and report.

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 22, 1895.

COLLECTOR CUSTOMS,
Philadelphia, Pa.:

Schooner *James W. Foster* expected to unlawfully embark men, arms, and ammunition for Cuba, to be transferred to her by tugs. She is said to be lying in Delaware River. She may endeavor to take dynamite from Thompson Point, opposite Chester. She cleared from Philadelphia for Tampa yesterday.

Spanish ambassador requests examination vessel at Delaware Breakwater. Detain her, investigate, and report, if she is in your district. Similar instructions given to collector Wilmington.

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 22, 1895.

COLLECTOR CUSTOMS,
Wilmington, Del.:

Schooner *James W. Foster* expected to unlawfully embark men, arms, and ammunition for Cuba, to be transferred to her by tugs. She is said to be lying in Delaware River. She may endeavor to take dynamite from Thompson Point, opposite Chester. She cleared from Philadelphia for Tampa yesterday.

Spanish ambassador requests examination vessel at Delaware Breakwater. Detain her, investigate, and report, if she is in your district. Similar instructions given to collector Philadelphia.

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 22, 1895.

Captain ABBEY,
Revenue steamer Winona, Key West, Fla.:

Keep sharp lookout for steamer *James W. Foster*, cleared from Philadelphia for Tampa.

W. E. CURTIS, *Assistant Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 22, 1895.

COMMANDING OFFICER REVENUE STEAMER FORWARD,
Key West, Fla.:

Keep sharp lookout for steamer *James W. Foster*, cleared from Philadelphia for Tampa.

W. E. CURTIS, *Assistant Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 22, 1895.

COMMANDING OFFICER REVENUE STEAMER MORRILL,
Tampa, Fla.:

Keep sharp lookout for steamer *James W. Foster*, cleared from Philadelphia for Tampa.

W. E. CURTIS, *Assistant Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 25, 1895.

DEPUTY COLLECTOR CUSTOMS,
Lewes, Del.:

Release schooner *James W. Foster* to master or owner.

S. WIKE, *Acting Secretary.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 25, 1895.

DEPUTY COLLECTOR CUSTOMS,
Lewes, Del.:

SIR: The following telegrams, signed by myself, were sent you to-day, viz: "Release schooner *James W. Foster* to master or owner;" and subsequently, "Keep watch schooner *James W. Foster* ordered released, so far as practicable, and report anything suspicious."

Respectfully, yours,

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 25, 1895.

DEPUTY COLLECTOR CUSTOMS,
Lewes, Del.:

Keep watch schooner *James W. Foster* ordered released, so far as practicable, and report anything suspicious.

S. WIKE. *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 25, 1895.

COLLECTOR CUSTOMS,
Wilmington, Del.:

Deputy collector Lewes has been instructed to release schooner *James W. Foster*, but to keep watch of her and report any suspicious circumstances.

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 26, 1895.

E. R. SHARPE,
Deputy Collector, Lewes, Del.:

Remove with your men immediately from the schooner *Foster.*

Keep this Department posted as to the movement of vessel, so far as practicable.

S. WIKE, Acting Secretary.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 27, 1895.

COLLECTOR CUSTOMS,
Philadelphia, Pa.:

Unofficial notice has been received that you have refused clearance to the Danish steamer *Horsa*. If this be so, report the fact, together with the causes of her detention.

S. WIKE, *Acting Secretary.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 27, 1895.

SIR: I have the honor to acknowledge the receipt of your note of the 25th instant, inclosing a communication from the minister of Spain, dated the 23d instant, in which his excellency states that "according to information which leaves no doubt in my (his) mind" the Danish steamer *Horsa*, on her voyage from Philadelphia to Port Antonio, Jamaica, took on board, near New York, an armed expedition and landed the same on the coast of the island of Cuba; and on this statement he requests that the vessel, which he says is now on her return voyage, may be detained on her arrival, in order, as he states, "that the accomplices and concealers of the crime which she has committed may not be able to do away with the evidence which may lead to her condemnation by the courts of justice."

In calling my attention to this communication, you ask that such steps may be taken in the matter for the vindication of the neutrality laws of the United States as the law and the facts warrant.

In response, I have the honor to say that the communication from the minister of Spain fails to furnish any evidence upon which this Department can form a conclusion as to whether or not the vessel named has violated any law of the United States, and, in the absence of such evidence, I do not feel justified in ordering her summary seizure or detention. In cases of such complaints where the authority of this Department is invoked, the evidence upon which its action is to be based should be furnished in order that injustice may not be done by the seizure or detention of the property of innocent parties, and you will please so advise his excellency.

I have the honor to be, very respectfully, yours,

J. G. CARLISLE, *Secretary.*

The SECRETARY OF STATE.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., January 9, 1896.

COLLECTOR CUSTOMS,
New York, N. Y.:

Secretary State informs this Department that our minister at Bogota telegraphs under date 8th instant that the President of Colombia states

that parties in New York are purchasing arms and a war vessel to assist in a revolution in the United States of Colombia, and requests the United States, as a friendly nation, to prevent the enterprise.

Communicate with Colombian consul in New York, and obtain from him such information as he can furnish. Take such measures as may be requisite and proper, and report action and information.

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., January 27, 1896.

COLLECTOR CUSTOMS,
Fernandina, Fla.:

Spanish minister states that Friday night steamer *J. W. Hawkins* left New York with an expedition of 150 men, arms, ammunition, and stores, in command of Calixto Garcia; that she may go south and take more men and arms at Palmbeach, Fla., or elsewhere; that she will pass in the United States waters near Key West; that the arms and ammunition confiscated at Cedar Keys, Fla., are ready to be embarked in schooner to join at sea the Garcia expedition, and that famous steamer *Commodore* at Wilmington, N. C., still in port, forms part of the conspiracy. Secretary of State expresses trust that apprehended attempt at violation international obligations of United States may be intercepted and prevented. Take necessary action to prevent violation neutrality laws. Consult United States attorney.

S. WIKE, *Acting Secretary.*

(Similar letter to collectors at Beaufort, N. C.; Beaufort, S. C.; Brunswick, Ga.; Charleston, S. C.; Georgetown, S. C.; Jacksonville, Fla.; Key West, Fla.; Norfolk, Va.; Savannah, Ga.; Wilmington, N. C.; St. Augustine, Fla., and Wilmington, Del.)

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., January 27, 1896.

COMMANDING OFFICER REVENUE STEAMER COLFAX,
Wilmington, N. C.:

Confer collector customs matter of which he is advised as to breach neutrality laws by steamer *J. W. Hawkins.* Render all assistance required.

C. S. HAMLIN, *Assistant Secretary.*

(Similar telegrams sent Captain Hand, revenue steamer *McLane,* Key West, Fla., and to Captain Herring, revenue steamer *Morrill,* Port Tampa, Fla.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., January 27, 1896.

SIR: The following telegram sent you to-day is hereby confirmed:

Spanish minister states that Friday night steamer *J. W. Hawkins* left New York with an expedition of 150 men, arms, ammunition, and stores, in command of Calixto Garcia; that she may go south and take more men and arms at Palmbeach, Fla., or elsewhere; that she will pass in the United States waters near Key West; that the arms and ammunition confiscated at Cedar Keys, Fla., are ready to be embarked in schooner to join at sea the Garcia expedition, and that famous steamer *Commodore* at Wilmington, N. C., still in port, forms part of the conspiracy. Secretary State expresses trust that apprehended attempt at violation international obligations of United States may be intercepted and prevented. Take necessary action to prevent violation neutrality laws. Consult United States attorney.

A copy of the Spanish minister's letter, dated January 26, 1896, is inclosed herewith for your information.

Respectfully, yours,

S. WIKE, *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Beaufort, N. C.*

(Similar letter to collectors at Beaufort, S. C.; Brunswick, Ga.; Charleston, S. C.; Fernandina, Fla.; Georgetown, S. C.; Key West, Fla.; Norfolk, Va.; Savannah, Ga.; Wilmington, N. C.; St. Augustine, Fla.; Wilmington, Del., and Jacksonville, Fla.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., January 29, 1896.

COLLECTOR OF CUSTOMS,
Wilmington, N. C.

SIR: Your telegram of the 27th instant is herewith returned. You are directed to prepare an answer in respectful terms to the instructions of this Department of the 27th instant, and forward it promptly by mail.

Respectfully, yours,

C. S. HAMLIN, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., January 30, 1896.

COLLECTOR CUSTOMS,
Wilmington, N. C.:

Examine again cargo *Commodore* and ascertain whether dynamite is on board; and scrutinize manifest presented before or after office hours, and if suspicious articles found, withhold clearance and notify Department by telegraph.

Use every means in your power to prevent violation neutrality laws. Confidential.

C. S. HAMLIN, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 1, 1896.

COLLECTOR CUSTOMS,
Wilmington, N. C.:

Refuse clearance to *Commodore* until further instructions. Consult United States attorney immediately.

J. G. CARLISLE, *Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 3, 1896.

COLLECTOR CUSTOMS,
Wilmington, N. C.:

In case steamer *Commodore* consult United States attorney and take action to-day in accordance with his advice. Department Justice is advised.

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 4, 1896.

COLLECTOR CUSTOMS,
Norfolk, Va.:

Your telegram that Spanish vice-consul states steamer *Isaac N. Veasey* about to violate neutrality laws too vague to warrant instructions from this Department for her seizure. Communicate with United States attorney and be governed by his advice. If evidence discovered demonstrating intention to violate said laws, report further to Department, and take measures to prevent such violation pending receipt instructions.

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 4, 1896.

COLLECTOR CUSTOMS,
Wilmington, N. C.:

Upon application you may clear *Commodore*, unless district attorney advises to the contrary or you have reason to suspect that she proposes to take out an expedition. Keep constant watch of vessel, and if an unusual body of men attempt to go aboard refuse clearance.

S. WIKE, *Acting Secretary.*

[Confidential.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 23, 1896.

Hon. J. T. KILBRETH,
132 Madison avenue, New York:

According to information received from State Department, steamer *Bermuda*, lying in harbor between Liberty and Staten islands, is suspected of preparing to take party and arms to assist Cuban insurgents. You will please take the necessary steps to have her watched, without exciting observation, reporting results here by wire.

W. E. CURTIS, *Assistant Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 25, 1896.

COLLECTOR CUSTOMS,
New York, N. Y.:

Report by telegraph present condition case alleged filibuster *Bermuda.*

S. WIKE, *Acting Secretary.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 28, 1896.

COLLECTOR OF CUSTOMS,
Tampa, Fla.:

SIR: This Department is in receipt of your letter dated the 24th instant, requesting instructions relative to your duty in the case of attempted exportations of arms and ammunition for the use of Cuban insurgents.

For your information and guidance, I transmit herewith a copy of a letter, dated October 12, 1895, from the collector of customs at New Orleans, and of a letter from the Attorney-General, dated October 15, 1895, relating to the matter.*

The Department will be ready to advise you regarding any special case which may arise in your jurisdiction, on a proper representation of the facts.

Respectfully, yours, S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 28, 1896.

COLLECTOR OF CUSTOMS,
Tampa, Fla.:

Instructions forwarded to you to-day by mail regarding shipments arms, ammunitions, etc.

S. WIKE, *Acting Secretary.*

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* Supra.

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 2, 1896.

COLLECTOR CUSTOMS,
Tampa, Fla.:

Spanish minister states that schooner *S. R. Mallory* has left Cedar Keys with arms confiscated in August, and 30 tons more. That schooner *Adel* will leave Tampa with Enrique Collo and a body of men, both schooners to proceed to Longport Inlet and afterwards to Alligator Key to meet steamer *Three Friends*, which left Jacksonville for that purpose. Both men and arms are to be shipped in her for Cuba. Communicate with officer revenue cutter and United States attorney and take measures to prevent violation neutrality laws in your district.

S. WIKE, *Acting Secretary.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 2, 1896.

COLLECTOR OF CUSTOMS,
Tampa, Fla.:

SIR: The following telegram, signed by myself, was sent you today, viz:

Spanish minister states that schooner *S. R. Mallory* has left Cedar Keys with arms confiscated in August, and 30 tons more. That schooner *Adel* will leave Tampa with Enrique Collo and a body of men, both schooners to proceed to Longport Inlet and afterwards to Alligator Key to meet steamer *Three Friends*, which left Jacksonville for that purpose. Both men and arms are to be shipped in her for Cuba. Communicate with officer revenue cutter and United States attorney and take measures to prevent violation neutrality laws in your district.

Respectfully, yours,

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 2, 1896.

COLLECTOR CUSTOMS,
Cedar Keys, Fla.:

Following telegram sent to collector customs, Tampa:

Spanish minister states that schooner *S. R. Mallory* has left Cedar Keys with arms confiscated in August, and 30 tons more. That schooner *Adel* will leave Tampa with Enrique Collo and a body of men, both schooners to proceed to Longport Inlet and afterwards to Alligator Key to meet steamer *Three Friends*, which left Jacksonville for that purpose. Both men and arms are to be shipped in her for Cuba. Communicate with officer revenue cutter and United States attorney and take measures to prevent violation neutrality laws in your district.

Be governed accordingly.

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 2, 1896.

COLLECTOR CUSTOMS,
Key West, Fla.:

Following telegram sent to collector customs, Tampa:

Spanish minister states that schooner *S. R. Mallory* has left Cedar Keys with arms confiscated in August, and 30 tons more. That schooner *Adel* will leave Tampa with Enrique Collo and a body of men, both schooners to proceed to Longport Inlet and afterwards to Alligator Key to meet steamer *Three Friends*, which left Jacksonville for that purpose. Both men and arms are to be shipped in her for Cuba. Communicate with officer revenue cutter, and United States attorney and take measures to prevent violation neutrality laws in your district.

Be governed accordingly.

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 2, 1896.

Captain HAND,
Revenue Steamer McLane, Key West, Fla.:

Lookout for vessels *S. R. Mallory*, *Adel*, and *Three Friends*, expected rendezvous about Alligator Key for expedition Cuba.

J. G. CARLISLE, *Secretary.*

(Similar telegram sent to Captain Herring, revenue steamer *Morrill*, at Port Tampa, Fla.)

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 4, 1896.

COLLECTOR CUSTOMS,
Tampa, Fla.:

Report facts constituting violation neutrality laws case *S. R. Mallory.*

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 4, 1896.

Captain HERRING,
Revenue Steamer Morrill, Port Tampa, Fla.:

No further instruction. Lay matter before collector.

C. S. HAMLIN, *Assistant Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 5, 1896.

COLLECTOR CUSTOMS,
Tampa, Fla.:

Because the cargo of a vessel consists in whole or in part of arms and ammunition does not constitute sufficient legal grounds for her seizure. Report facts expeditiously to the United States attorney, and unless legal steps are immediately taken for the further detention of the *S. R. Mallory* release her and advise revenue-cutter officials.

S. WIKE, *Acting Secretary.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 6, 1896.

COLLECTOR OF CUSTOMS,
Tampa, Fla.

SIR: This Department is in receipt of your report dated the 3d instant, relative to suspected filibustering.

As regards the case of the schooner *S. R. Mallory*, the Department instructed you by telegram yesterday, as follows:

Because the cargo of a vessel consists in whole or in part of arms and ammunition does not constitute sufficient legal grounds for her seizure. Report facts expeditiously to the United States attorney, and unless legal steps are immediately taken for the further detention of the *S. R. Mallory* release her and advise revenue-cutter officials.

It is expected that you will take immediate action under these instructions and that unless there is legal ground for detaining the vessel she will be allowed to proceed. If, under the laws relating to customs, navigation, etc., fines or penalties have been incurred, action should be had as usual in such cases.

Your statement that you can not "see how it is possible to accomplish anything toward the stopping of persons and arms going out of this port for Cuba and now becoming an every-day occurrence," is noted.

In the Department's letter dated the 28th ultimo you were informed that the inclosures, consisting of a copy of a letter from the collector of customs at New Orleans and of an opinion by the Attorney-General, were forwarded for your information and guidance.

It was intended that you should investigate any case arising in your district, and take action accordingly, without unnecessary delay.

The Department desires that such cases be disposed of as provided for by law, and if there be no legal grounds for the detention of a vessel, whether loaded with arms or ammunition or otherwise, you will see that she is allowed to proceed on her voyage.

It may be stated that your communication relative to the *S. R. Mallory* did not set forth such grounds, and that it is difficult for the Department to instruct you in special cases, when you fail to specify fully facts showing whether or not there has been a violation of the statutes.

Respectfully, yours,

S. WIKE, *Acting Secretary.*

[Telegram.]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 19, 1896.

COLLECTOR CUSTOMS,
Charleston, S. C.:

Collector customs Somers Point, N. J., reports filibustering expedition for Cuba was transferred from steamer *Atlantic City* to another steamer, probably the *Bermuda*, off Great Egg Harbor Inlet, yesterday morning at 8 o'clock, said to be composed of General Garcia and several followers. If vessel is carrying an expedition consisting of arms and men, in violation of Title 67, Revised Statutes of the United States, seize her if she arrives within your jurisdiction. The fact that a vessel carries a cargo of arms is not sufficient of itself to authorize a seizure. If necessary, communicate with any revenue cutter and with the United States attorney.

S. WIKE, *Acting Secretary.*

(Similar telegrams sent to collectors at Savannah, Ga., Fernandina and Key West, Fla.)

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 181.

IN THE SENATE OF THE UNITED STATES.

REPORT

OF THE

DELEGATES OF THE UNITED STATES

TO THE

FIFTH INTERNATIONAL PRISON CONGRESS

HELD AT

PARIS, FRANCE, IN JULY, 1895.

MARCH 23, 1896.—Referred to the Committee on Foreign Relations and ordered to be printed.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1896.

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LETTER OF TRANSMITTAL.

DEPARTMENT OF STATE,
Washington, March 21, 1896.

SIR: I have the honor to lay before you, with a view to its consideration by the Congress, the report of the delegates of the United States to the Fifth International Prison Congress, which was held at Paris, France, in July, 1895.

It presents a comprehensive statement of all that transpired on that occasion and contains much valuable information that might profitably be considered with a view to the alleviation of certain phases of human misery without sacrificing any of the absolute prerequisites to or guaranties of social order.

In connection with this report Gen. R. Brinkerhoff, president of the American delegation, has submitted to the Department, under date of the 19th instant, a request from the International Prison Commission, which is the executive and permanent arm of the Congress, that the Government of the United States be represented by a delegate in its organization. Although this Government suggested and founded the International Prison Congress, it does not contribute anything toward its expense and has never had a representative on the permanent Commission. Even the delegates from this country, who have been commissioned by this Department and who have attended the quinquennial meetings of the Congress, have uniformly borne their own expenses, with the single exception of the late Dr. E. C. Wines, for the payment of whose expenses Congress made provision.

The subscription to the International Prison Commission is based upon the population of the countries represented, being $5 per 1,000,000 inhabitants. Assuming the population of the United States to be 65,000,000, the annual subscription would be but $325, or $1,625 for the five years. The money thus received by the International Commission is expended in the publication of monographs, bulletins, reports, and the proceedings of the International Prison Congress, which are sent to the Governments in proportion to their subscriptions.

The Commission holds a meeting every alternate summer in Switzerland, and the appropriation of the United States should properly include

the expenses of the delegate from this country. Thus, an annual appropriation of $2,000 would not only defray the subscription of this Government toward the support of the Commission, but also the expenses at home and abroad of the United States commissioner.

It may be observed that the rules of the Commission do not require that any delegate shall commit his Government to any action taken by the Commission; it simply secures the support and cooperation of the different nations represented in the study of the great problems relating to the suppression of crime, the protection of society, the proper treatment of the criminal, the moral rescue of children, the organization of every means for preventing the discharged prisoner from relapsing into the life of crime.

The American delegation feel very strongly the importance of acceding to the request of the International Prison Commission, not merely because the Government of the United States appears to be morally bound to support an international enterprise which it practically inaugurated, but because the American people may reap the greatest benefit from so doing. The International Prison Congress is a great humanitary movement. It is not confined, as its name might suggest, merely to the question of administering prisons, but to the whole subject of the prevention and treatment of crime in all its aspects. In this broad aspect of the case it strongly appeals for sympathy and aid, to the end that the work may be prosecuted under the most favorable and most advantageous conditions.

In view of the considerations herein advanced, of others equally cogent that may be found from a careful reading of the correspondence, of the recommendation of the American delegation, and of the formal request of the International Commission, I strongly urge that the sum of $2,000 annually be appropriated for the subscription to the Commission and for the expenses of the American member thereof.

If possible, the appropriation desired should be included in the sundry civil bill or in some other available form.

I have the honor to be, sir, your obedient servant,

RICHARD OLNEY.

Hon. ADLAI E. STEVENSON,
Vice-President of the United States.

INTERNATIONAL PRISON COMMISSION.

WASHINGTON, D. C., *March 19, 1896.*

SIR: The American delegates commissioned by the Secretary of State to the International Prison Congress held at Paris, July, 1895, have been charged by the International Prison Commission, which is the executive and permanent arm of the Congress, with presenting to the Government of the United States the official request of the Commission that the United States should be represented in its organization. The grounds of this request and all that it involves are presented in the following statement, accompanied by a translation of a letter from the secretary of the Commission.

Your delegates earnestly hope that the matter may receive prompt consideration from the Government. and that the invitation of the Commission may be accepted.

With great respect, your obedient servants,

R. BRINKERHOFF,
President American Delegation.
SAMUEL J. BARROWS,
Secretary.

Hon. RICHARD OLNEY,
Secretary of State of the United States.

THE NEED OF A UNITED STATES COMMISSIONER.

The United States had the honor of founding, twenty-five years ago, the International Prison Congress. It appointed Dr. E. C. Wines to go to Europe and urge the cooperation of European Governments. Dr. Wines spent a year abroad for this purpose, and his expenses were paid by a Congressional appropriation. As the result of his earnest efforts, the International Prison Congress was held in London in 1872.

It was then determined to organize the Congress on a permanent basis. A committee called the International Prison Commission was formed, of which Dr. Wines was made president. Invitations were sent by him to various Governments to assist at the session of the Commission called at Bruchsal in 1875. Many countries responded to

this appeal. The organization of this International Commission was completed in 1878, at the second International Prison Congress, held at Stockholm. Rules and regulations were adopted. The Government of Sweden and Norway was asked to communicate the plan of organization to the different Governments of the world and to invite their cooperation.

The death of Dr. Wines has interfered with the proper presentation of the plan to the United States. The United States expressed its entire sympathy with the work, but explained that it could only accept after having complied with certain requirements of its constitutional law; that is to say, securing some appropriation from Congress for its subscription to the Commission.

The other Governments accepting are France, Italy, Switzerland, Denmark, Spain, Bavaria, the free city of Hamburg, the free city of Lubeck, the Netherlands, Russia, Hungary, and Austria. Since the work of Dr. Wines began five international congresses have been held, and it is the plan to hold them once in five years; but the United States, though it suggested and founded the organization, does not now contribute anything toward its expenses, and is not represented by a delegate on the permanent Commission. It has contented itself with commissioning delegates to the quinquennial gatherings, who, when they have attended, have paid their own expenses.

The subscription to the International Prison Commission is based on the population of the countries represented, being $5 for each 1,000,000 inhabitants. Assuming the population of the United States to be 65,000,000, the annual subscription would be but $325, or $1,625 for the five years. The money thus received is expended in the publication of monographs, bulletins, reports, and the proceedings of the International Congress, which are sent to the Governments in proportion to their subscriptions.

The Commission holds a meeting annually or biennially in Switzerland, and the appropriation from the United States ought to include the expenses of the delegate from this country. The sum of $2,000 annually would pay for the subscription of the United States to the Commission, and also for the expenses of the United States commissioner in attending the meetings abroad and in collecting valuable information at home.

It should be said that the rules of the Commission do not require that the delegate shall commit his Government to any action taken by the Commission; it simply secures the support and cooperation of the different nations represented in the study of the great problems relating to the suppression of crime, the protection of society, the proper treatment of the criminal, the moral rescue of children, the organization of every means for preventing the discharged prisoner from relapsing into the life of crime.

The International Commission at its last meeting invited again the cooperation of the United States in its work, and a letter on the

subject, dated January 31, 1896, has been forwarded by Dr. Guillaume, the secretary of the International Commission, asking that the American delegation to the International Congress at Paris, of which the Commission is the executive arm, formally present the matter to the American Government and earnestly request its cooperation.

The American delegation feel very strongly the importance of acceding to this request, not merely because the United States seems to be morally bound to support an international enterprise which it inaugurated, but because the American people may reap the greatest benefit from so doing. The International Prison Congress is a great humanitary movement. It is not confined, as its name might suggest, merely to the question of administering prisons, but to the whole subject of the prevention and treatment of crime in all its aspects.

Within the last twenty-five years, since the Congress was established, the different Governments represented have derived great advantages from studying the criminal codes, reformatory and penal institutions, and preventive methods and legislation in different countries. Thus, France, England, and Belgium have borrowed from the United States the system of probation established in Massachusetts, while Illinois, New York, and Massachusetts have borrowed from France the system now in vogue in that country of identifying criminals, which ought, indeed, to be adopted everywhere in the United States. In many other respects, such as various features of prison administration, the treatment of discharged convicts, etc., we have much to learn from Europe. It is also important that the American commissioner should be charged with the duty of presenting to the Commission the best fruits of American experience.

OFFICIAL INVITATION TO THE UNITED STATES.

At the close of the Congress proper the International Penitentiary Commission, which is the permanent committee of organization, held a session at the College of France on Wednesday, July 10. In addition to the regular members of the Commission, delegates from Great Britain, Austria, and the United States were present, all of whom expressed the hope that their countries might be represented in the permanent organization. M. Duflos was elected an honorary president of the Commission. M. de Latour, of Belgium, was chosen president, and M. de Laszlo, of Hungary, treasurer. M. Dr. Guillaume, though wishing to withdraw from the position as general secretary, was induced to retain that position.

The delegates of the United States urge upon the Government the importance of being represented not only at the sessions of the Congress, which are held once in five years, but also in the annual meetings of the International Penitentiary Commission. The congresses have assumed such magnitude that a permanent committee of organization to prepare programmes and questions, secure monographs, and make

preparations for the numerous volumes of preliminary reports is absolutely necessary.

A letter on this subject, dated January 31, 1896, has been forwarded to the president of the American delegation from Dr. Guillaume, the secretary of the International Commission. Accompanying this letter is a communication for presentation to the Secretary of State, which is embodied herewith:

INTERNATIONAL PENITENTIARY COMMISSION,
Brussels and Berne, January, 1896.

To the Secretary of State of the United States:

We have the honor to lay before your excellency the following facts:

The International Prison Congress which took place in London in 1872, thanks to the initiative of Dr. E. C. Wines, representing officially the Government of the United States, had rather the character of a free assembly, although the larger part of the nations were represented by official delegates. The end in view was less to discuss theoretical questions than to exchange information and to give to representatives of penal science the opportunity of seeing and knowing each other. Before separating, the Congress, feeling the need of continuing the work thus begun, chose a commission whose duty it was to arrange a second International Congress.

After the first meeting at Brussels, the Commission found that to attain the end it sought it was indispensable to give to the Commission an official character. Dr. Wines, president of the Commission, addressed to the various Governments a request for the appointments of delegates to assist at the session of the Commission called at Bruchsal, 1875. The Governments of France, Sweden, Norway, Denmark, Italy, the grand-duchy of Baden, Holland, and Switzerland responded to this appeal. Their delegates took part in the discussions of the Commission with the same rights as those who had been appointed by the London Congress.

In 1877 the officers were asked to draw up a set of rules of organization in order better to define the character of the International Penitentiary Commission. This draft of rules was submitted in 1878, when the Congress met in Stockholm, to the official delegates of the Governments represented at this international gathering. After the discussion and adoption of the plan, the Commission was instructed to address itself to the Government of his majesty, the King of Sweden and Norway, to ask it to please accept the mission of communicating these regulations to the other Governments and to recommend their adoption. His excellency, M. Bjornstjerna, who had already shown his great interest in the work of the Congress by accepting its presidency, promptly submitted to the approbation of the Governments represented at the Congress of Stockholm the draft of regulations for the International Penitentiary Commission.

Eight States accepted the plan purely and simply; four accepted it conditionally, two declined more or less explicitly to participate in the work of the Commission.

The States accepting without condition were Bavaria, Denmark, Spain, the free city of Hamburg, the free city of Lubeck, the Netherlands, Russia, and Switzerland.

The countries which accepted only on certain conditions were Austria, Hungary, France, Italy, and Sweden.

Those which declined to be represented in the Commission were the United States of America and Belgium.

The Government of the United States expressed its entire sympathy with the work, but explained that it could only accept after having complied with certain requirements of its constitutional law, and the Belgian Government reserved the right of sending delegates to the Prison Congress and to accept finally membership in the Commission when it had recognized its utility for its own country. The English Government, which was not represented officially at the London Congress or that of *Stockholm, continued* to maintain a neutral position.

After having examined the observations made on the scheme of organization by the Governments of the five States which accepted membership conditionally, the Commission, composed of official delegates, met at Paris, 1880, and gave a definite form to the plan, and in 1886, in a session at Berne, it added an interpretative statement to dispel all ambiguity and misunderstanding.

We have the honor of submitting to your excellency a copy of the regulations as adopted in the session at Paris in 1880 and the interpretative act which was added at the session of Berne in 1886.

Since then the Governments of France, Hungary, Italy, and Belgium have accepted the by-laws and are represented in the International Commission. Together with the other Governments which had before adopted the regulations and taken part in the work of the Commission, they have paid to the treasurer their annual subscription, which has been fixed at 25 francs ($5) per million inhabitants.

Thanks to these financial resources, the Commission has been able to publish in a quarterly bulletin the documents mentioned in article 6 of the by-laws, and above all the preparatory reports and proceedings of the congresses which, succeeding that of Stockholm, were held in Rome in 1885, St. Petersburg in 1890, and Paris in 1895. Copies of this bulletin are sent to the Governments in proportion to their subscription.

The Government of His Majesty the King of Belgium has addressed to the Commission a gracious invitation to hold at Brussels in 1900 the International Prison Congress. That invitation has been accepted with gratitude by the Paris Congress, in which your honorable Government has shown the liveliest interest by sending official delegates. These are charged by us with presenting and interpreting to your excellency the wishes of the Commission, which hopes to see every country represented in its organization and their delegates taking an active part in its proceedings.

In the hope of a favorable response, we beg your excellency to accept the assurance of our distinguished consideration and of our respectful devotion.

In the name of the Commission:

DE LATOUR, *President.*
Dr. GUILLAUME, *Secretary.*

In accordance with this request, and believing heartily in the value to the United States as well as to the International Prison Congress of such representation, the American delegates earnestly urge the acceptance of this invitation and the appointment of a member of the Commission by the United States. The expense to the Government, not exceeding $2,000 annually, is inconsiderable compared with the value of being represented in a great international movement for the prevention of crime, the protection of society, the rescue of children, and the reformation of the erring. This international movement the United States had the honor of starting, and no country in the world is more interested in promoting it.

REPORT

OF THE

DELEGATES COMMISSIONED BY THE SECRETARY OF STATE TO THE FIFTH INTERNATIONAL PRISON CONGRESS AT PARIS, JULY, 1895.

REPORT OF THE DELEGATES TO THE FIFTH INTERNATIONAL PRISON CONGRESS AT PARIS, JULY, 1895.

WASHINGTON, D. C., *March 18, 1896.*

SIR: As secretary of the delegation of the United States to the Fifth International Prison Congress at Paris, I have the honor to present herewith the report of the delegates commissioned by the Secretary of State. The report has been personally approved and signed by each member of the delegation.

It is submitted with the hope that it may be found of sufficient value to transmit to Congress, and, as a public document, serve some useful purpose of information and education in this country.

I am, sir, your obedient servant,

SAMUEL J. BARROWS.

The honorable the SECRETARY OF STATE.

PROCEEDINGS OF THE CONGRESS.

ORGANIZATION OF THE AMERICAN DELEGATION.

The invitation to the United States Government to commission delegates to the Fifth International Prison Congress was forwarded and communicated by the Department of State to the National Prison Association of the United States held at St. Paul, Minn., June 16–20, 1894, with the request that the association should choose a number of delegates. A special committee appointed by the association reported the following names, which were unanimously adopted: Gen. R. Brinkerhoff, Ohio; Rev. J. L. Milligan, Pennsylvania; R. W. McClaughry, Illinois; Dr. P. D. Sims, Tennessee; Rev. S. J. Barrows, Massachusetts; Charlton T. Lewis, New Jersey; J. S. Appel, Colorado; Judge J. W. Willis, Minnesota; Rev. F. H. Wines, Illinois; Walter Lindley, M. D., California.

These gentlemen were accordingly commissioned by the Department of State, but owing to various circumstances only four of them were able to go to Paris, namely, Gen. R. Brinkerhoff, president of the

National Prison Association; Charlton T. Lewis, president of the Prison Association of New York; Maj. R. W. McClaughry, superintendent of the Illinois State Reformatory at Pontiac, Ill.; Rev. S. J. Barrows, of the Massachusetts Prison Association.

The official delegates of the United States were, however, reenforced at Paris by a number of other delegates appointed by the governors of several of the States. These were: C. D. Randall, of Michigan, representing the United States Bureau of Education; Rev. W. M. Pettis, of Tennessee; Mr. John F. Norrish, of Minnesota; Mrs. Deborah C. Leeds, of Pennsylvania; Mr. Lawrence Poland, of Ohio; Mrs. Phebe C. Wright, of New Jersey; Mr. W. M. F. Round, of New York; Mr. Philip W. Ayres, of Ohio; Mrs. Amy Willets, of New York; Mr. H. C. Ranney, of Ohio, and Mr. Michel Heymann, of Louisiana.

At a meeting held at the Hotel Binda June 30 it was decided that the gentlemen thus named, with the official delegates of the United States, should organize as the American delegation. Gen. R. Brinkerhoff was chosen president and Rev. Samuel J. Barrows secretary. During the sessions of the Congress meetings of the delegation were held from time to time for purposes of business and also for social reunion.

As some of the delegates thus named will probably make individual reports to the authorities appointing them, the report herewith submitted is limited to the four delegates representing officially the United States. By a vote of this delegation Rev. S. J. Barrows, the secretary, was authorized and requested to prepare this report.

PRELIMINARY WORK OF THE INTERNATIONAL COMMISSION.

An important feature of these congresses is the large amount of preliminary work that is done in preparation for the quinquennial gathering. The permanent International Commission, consisting of eight of the most prominent penologists of Europe, with Dr. Guillaume, of Switzerland, as its efficient secretary, is the organic bridge which unites one congress with the next and give continuity, unity, and development to the work.

This Commission prepares a programme more than a year in advance. Specialists in all parts of the world are invited to write papers on questions chosen for discussion. The reports for the present Congress represented the opinions and experience of 240 writers, and amounted to 2,500 pages in print. They were all printed in French three months before the opening of the Congress and were sent in advance to the official delegates. Thus every delegate knew beforehand not only the subjects on the programme but the line of argument which would be advanced, and the evidence for and against certain conclusions. Instead of being overloaded by a great mass of papers, the decks were kept clear for discussion. This gave warmth and vivacity to debate. In addition to these reports the Commission secured monographs from many different countries giving facts and statistics in regard to their

prison systems. The questions carefully prepared by the Commission on which these monographs were framed were uniform throughout, so that the penological student has an opportunity for comparative study not easily secured elsewhere. This large amount of preliminary material will undoubtedly prove to be as valuable as the proceedings of the Congress itself.

OPENING OF THE CONGRESS.

The Congress was formally opened June 30, at 4 p. m., in the great amphitheater of the Sorbonne. The occasion was honored by the presence on the platform of the President of the Republic, Mr. Félix Faure, accompanied by his ministers, the chiefs of the supreme court and of the court of appeals, the members of the penitentiary commission, the members of the French commission of organization, and other gentlemen of distinguished position. In the hemicycle were grouped the members of the Congress and a large number of senators, deputies, and directors of various departments of public administration. The band of the Guarde Républicaine played La Marseillaise. The members of the Congress rose and the President was received with great applause. M. George Leygues, minister of the interior, after greeting the President of the Republic and expressing thanks for the encouragement of his presence, extended the welcome to the delegates.

ADDRESS OF WELCOME BY M. LEYGUES, MINISTER OF THE INTERIOR.

In the name of the Government of the Republic, I extend a welcome to the foreign delegates who have come here to affirm the unchangeable union of those who have devoted their lives to the pursuit of truth and the alleviation of human misery. Science, gentlemen, takes on more and more an international character. The perpetual intercourse which goes on through the press does not suffice. Scientists themselves must come together to divulge their discoveries and to blend into a universal patrimony the fruits of their meditation and their work. London, Stockholm, Rome, St. Petersburg mark the stations of progress which penitentiary science has traversed until to-day. The work in which you are engaged, gentlemen, is one of the most arduous and noble which can be conceived. To strengthen repressive action and at the same time introduce more humanity in the laws; to ask for indulgence rather than rigor, without abandoning any of the indispensable guaranties of social order; to revive in the soul of the delinquent and the criminal the notion of duty, of right, and of justice, such is the end you propose to yourselves.

It seemed at first that your ideal was placed too high. You were reproached with attempting the impossible; your generous conceptions were greeted as chimeras; you were accused of sentimentalism and feebleness. Nothing could shake your faith. You knew better than anyone that there are some of the sick who do not wish to be cured—incorrigibles who need to be put where they can not harm. But you said that all the sick are not incurable, and that there are means of salvation which should at least be applied. Perversity, in your eyes, is only the exception. You have affirmed that human nature is at bottom right, loyal, and generous. You have never despaired of that, and you are right. In the darkest and most ravaged heart there may survive, as in the ruins of a temple, a last lamp, forgotten by the last priest, which burns still for truth and goodness. The question is not of substituting for penal laws a sort of philosophical indifference which will compromise public security. It is the question of *stimulating* moral forces and developing generous *instincts, which are able to prevent the* offense or the crime, and, after the downfall,

of raising and rehabilitating the guilty. No one maintains the irresponsibility of the being who has done wrong. That would be to affirm the inutility of chastisement or of recompense. It is true that physical constitution, education, heredity, and misery exercise a direct influence on criminality. Legislators have taken account of these inevitable reactions in the preparation of laws and the gradation of penalties. Upon this point the tradition has not changed, but you made an innovation when, breaking with ancient errors, you said that intimidation and fear are not the only means of assuring the amendment of the culpable, but that education and hope are also sure means of obtaining it.

That simple affirmation was a revolution. You had spoken of goodness; you had pressed a flower in the austere pages of the code. Your doctrine is just; chastisement without possibility of pardon and forgetfulness discourages and degrades; the hope of rehabilitation provokes to effort and restores. You have put principle into practice, but your ambition has not been satisfied. To repress or to amend is well, to prevent is better, and you have wished to drain even the source of evil. The prison congresses have accomplished here the most beautiful part of their work in revising the legislation relative to abandoned or wayward children. To rescue children from bad treatment, bad examples and surroundings is to fulfill the first of civic duties. Has society the right to punish a feeble being and not to rescue and protect it? To extend to the wayward child a friendly hand, to console it in its distress, to forget and make it forget its fault is to make a good citizen of one who might become a useless and dangerous being; that is to serve one's country and perhaps, better still, to serve humanity. It is to your indefatigable propaganda, gentlemen, that is due the reformation of houses of correction and the development of those admirable works of patronage which in the last twenty years have appeared upon all parts of the globe. That result is sufficient alone to demonstrate the social and philosophical range of your work and your right to public gratitude. Wherever you establish your sessions you receive the highest and most precious proofs of sympathy. Public opinion encourages you and governments deem it an honor to collaborate with you. In combatting moral maladies, in arresting their advance, in extinguishing their fires you accomplish work which goes beyond the limits of your action. You help thus to assure the peaceful evolution of progress; for society like organized bodies needs to prosper and to grow in health as well as in liberty.

Gentlemen, may the bonds of mutual esteem and of reciprocal confidence which unite you already draw you together more closely for the welfare of your countries. May the new efforts you undertake become a success for peace of conscience and the triumph of truth and justice.

I declare the Fifth International Penitentiary Congress open.

These noble sentiments of M. Leygues, minister of the interior, who has closely identified himself with the work of prison reform, were greeted with loud applause. Upon nothing was the Congress more unanimous than upon the principles which should govern its action. Prison reformers have yet a great deal to do in educating the public to accept these fundamental principles in which the perfection of society and the reformation of the prisoner go hand in hand. But in the Congress these principles were never doubted or debated. They were the base line by which everything else was measured, and the work of the body was to apply these simple principles to very complex problems.

RESPONSE OF M. POLS.

M. Pols, of Holland, vice-president of the International Penitentiary *Commission, responded* eloquently for the delegates, returning thanks

for the generous reception which France had given to the Congress, the preparations it had made for it, and the resources placed at its disposal. Calling attention to the moral and humane significance of the brilliant gathering of distinguished men in that temple of science, and the greeting of the minister of the interior, M. Pols found in the scene and the address an expression not only of individual opinion, but of the moral support of the French people. Referring then to the object of the Congress, he said:

Who doubts now the value of this work? It is not simply an affair of justice or of administration confided to the intelligent and active care of those in authority; it is above all a social interest of the first rank which demands the combined action of all social forces, and of private action joined with that of authority, each mutually sustaining the other. We are, happily, very far from the time when it was thought that justice was honored in being represented as cold and impassible, the sword and the scales in her hand, but her eyes bandaged. That symbol of the partiality and integrity of ideal justice was often badly supported by the facts. The bandage symbolized better, perhaps, another quality of justice as formerly conceived, that of not seeing clearly in weighing the crime, but of striking blindly and without discernment the criminal penitentiary science, whose triumphant advance marks the great progress of humanity, has dethroned cold, blind, and impassible justice.

Recognizing the futility of combatting crime by simply attacking the criminal, of cutting down the weeds without going to the roots, it has completely changed its tactics of repression. Seeking to determine the causes and the movements of crime, it has been quick to see that the responsibility is not to be attributed alone to the material author of the crime. It has recognized the complicity of human nature and of society, the necessity of a complete revolution in the weapons of combat and in the means of attack and defense. In maintaining a horror of crime, it has modified considerably the sentiment concerning the prisoner. If it has not discovered those noble truths, repeated for centuries as beautiful sentences which one might admire while dispensing with their application, namely, that prevention is better than punishment, and that justice does not exclude charity—that even there is no justice without charity, as there is no charity without justice—it has made them living and vivifying principles of reform, and has infused them into legislation and administration.

But this movement so powerful and truthful is not due to official initiative, but to the awakening of the public conscience by private action. At the call of chosen spirits the human conscience has awakened from its sleep where it observed a conventional routine, and has overthrown the idol of a blind and brutal justice to substitute a conception more noble and more enlightened. That conception, which we may consider as generally adopted, and which has exercised a salutary influence upon legislation and practice, is nevertheless far from having attained its full development. It would not even be able to maintain itself if the generous influences which have imparted life to it should now fail, if it did not have that warm vivification which the public conscience may give to it. For one can not deny that it has multiplied questions and singularly complicated the problem of justice, extended more and more the field of study and the difficulties to be solved. This Congress furnishes proofs of that. But it furnishes, at the same time, the proof that the more extensive is the task, the greater is the number and devotion of the workers. Our beginnings were very modest; but from London to Stockholm, Stockholm to Rome, and Rome to St. Petersburg the work of the Congress has not only gradually expanded, but has more and more conciliated the favor of the Governments and public opinion. If death has taken a number of our illustrious colleagues, whose loss we deeply regret, others, inspired by their *devotion, have* taken their places in large numbers. At the

same time the horizon of penitentiary science has been enlarged, and the congresses have had to follow these lines of progress which in part are due to them. The march from St. Petersburg to Paris marked a new stage of progress. The Paris Congress will distinguish itself, we hope, by a special solicitude for unfortunate and wayward children. Thanks to the growing recognition of the importance of this work, which so appeals to our sympathies, and thanks to the experience acquired at the Congress of St. Petersburg, the International Commission, accepting a proposition of the delegate of the Russian Government, has recognized the necessity of reserving a special section for all questions concerning children. It will be a mark of honor to the Fifth Congress that it has devoted so large a part of its attention to that section of humanity which, still more than any others, demands the severe application of the principle that there is no justice without charity.

Fortunately, if the Congress has a task more extended and more complicated, it is able to enjoy the moral support not only of the Government of France, which has already been assured to us, but also of the nation itself which has taken such a great part in the reawakening of the public conscience and in the generous and powerful movement that has created prison science and made it the common work of all those who interest themselves in the welfare of humanity.

Belonging ourselves to that section of humanity which insensibly has been led to accord, it may be, too large a place to justice, we welcome above all the adhesion more and more marked and the cooperation more and more warm of that other section of humanity which is interested above all in the triumph of charity. If penitentiary science inclines more and more to accord to woman a distinct place as it has already accorded it to childhood, it needs above all the moral support and the cooperation of woman in the study of the multiplied questions relating to wayward and unfortunate women. The solutions of questions concerning children and these other unfortunates will not advance without the cooperation of woman. The presence of so many distinguished women in our ranks and the presence of so many others in this gathering are happy and auspicious indications that the Congress of Paris will take a new step in its onward march.

To secure this new success it will only have to maintain the spirit which has inspired its predecessors. Recognizing that our debates and resolutions are powerless to solve these questions except by the confidence which they inspire and the momentum they give to public opinion, it is our duty to merit the moral support which we receive on all sides. Our success is further assured by the good preparation that has been made for our work.

Mr. Minister, the words of high esteem which you have addressed to the International Commission we accept from our hearts as a precious testimony of your good will. Faithful to the mission which the Commission has received from the Governments which have united in forming it, it has indicated the direction of our work. But for the preparation of our labors the praise is due in great part to our worthy president, M. Duflos, to the employees of his administration who have assisted him, to the distinguished men who have responded to this appeal to form a committee of organization, to La Société Générale des Prisons, and to all those, whether in this or other countries, who by their scientific reports have prepared the ground of discussion. I will not enlarge upon their merit. The presence of these coworkers here compels discretion. But I can not finish without offering to all, and in the first place to our honorable president, the sincere and cordial tribute of our lively gratitude for the distinguished service they have rendered to the Congress and for their zeal and devotion in assuring its success.

I am conscious of all that is lacking in the expression of my thought and in my attempt to convey the sentiment of my colleagues, but I am consoled by the hope that the Congress itself by its labors will offer a testimony which will have more value than would the word of the greatest orator.

The foreign delegates then assembled in the grand salon of the Sorbonne, where they were presented to the President of the Republic, who was surrounded by his ministers, the president of the Chamber of Deputies, ministers of foreign countries, and by his military escort.

ORGANIZATION OF THE CONGRESS.

On Monday morning, July 1, at 9 o'clock the members of the Congress reassembled in the grand amphitheater of the Sorbonne to complete the organization. M. Pols opened the session and, conforming to a wish formulated by the International Commission that the member of the Commission representing the country in which the Congress meets should be chosen president, he nominated M. F. Duflos as president of the Fifth International Prison Congress.

OPENING ADDRESS OF THE PRESIDENT, M. DUFLOS.

LADIES AND GENTLEMEN: It is not my intention to delay by a long discourse the commencement of your labors, especially as you have heard here developed in admirable language by voices of the highest authority the generous principles which will inspire you in your discussions and the controlling thought which has given birth to the magnificent work of the International Prison Congresses. I can not fail, however, in that duty of gratitude which is imposed upon me. I thank you for the great honor which you have conferred upon me. I would not dare to accept it if I had not been sustained by the powerful cooperation of my eminent colleagues, Commandeur Beltrani-Scalia, His Excellency M. Galkine-Wraskoy, and Professeur Pols. Their scientific experience and the brilliant rôle which they have played in preceding gatherings assures a valuable authority to the presidency of which they form a part. The cordial sympathy with which they have honored me up to the present time permits me to hope that I may be able to fulfill the high and difficult task you have confided to me.

And now, since you have given me the right, in the name of all let me renew to our foreign colleagues the welcome to Paris and to France. So imposing is the character of this gathering, in which the illustrious men of two worlds are mingled, that I shall be pardoned if I give expression to the great joy of my heart that I am able to affirm the universal interest which our studies have attained and the eagerness with which our appeal has been answered.

It is enough to be in the presence of this assembly to be able to affirm that the labors of this Fifth International Prison Congress will be fruitful, that after some days of scientific discussion, your resolutions prepared by profound studies and the meditation of lofty minds will furnish to criminology and to penitentiary science new lights and numerous elements of progress. From the composition of your programme and the remarkable preparatory reports which serve as the basis of your discussions, we may discern the growing attention which is given to the moral side of the work and to the necessity of the prevention of crime. Science is resolutely attacking the source of evil, deciding firmly to repress rigorously when that is necessary, but considering repression simply as a makeshift. It is an extreme measure that society should avoid in the greatest possible degree by working for the amendment of the bad and offering to them means of restoration; above all by employing all its energies to save from crime through preventive education the unfortunate children which misery or bad examples seem to consign to an irregular and depraved existence.

Therefore, questions concerning vagrancy, drunkenness, and prostitution take the place of highest importance in our programmes. The former third section of the

Congress has been divided into two, and all which relates to childhood is made to-day the subject of a special section.

There is nothing more beautiful, gentlemen, nothing grander than the spectacle presented by this gathering. Is it not singularly moving to see those who belong to the highest intellectual and social ranks, crossing a part of the globe and traversing oceans to study together the means of diminishing upon this earth the sum of evil, crime, and misery which skeptics assume can not be reduced, in order to spare themselves the anxiety of the conflict and the labor of research.

You not only apply yourselves to scientific problems capable of furnishing the mind with delicate satisfactions; you do not hesitate when you truly believe it will serve the cause of humanity to overcome natural repugnance and lawful indignation. You are inaccessible to fatigue, but the hatred of crime does not drive you to anger; for you know that nothing good, nothing efficacious, nothing durable can be effected if the heart does not come to the aid of the mind. You combat the crime, but when the criminal has been placed momentarily beyond a state of harm you think it necessary to defend him against himself, to seek to enfranchise him from his instincts, to lead him into light and truth and honor. You feel it necessary to extend to wayward childhood a protecting hand; if it is necessary often to be severe it is rarely necessary to be unrelenting. In a word, charity animates you as much as the anxiety for social defense. It sustains your hearts while science guides your minds. Honor, then, to charity and science; that is the sentiment under which I propose to you that the Fifth International Congress shall work—honor to charity and to science. They are indissolubly joined here. It is through them that the work of progress and peace will be realized; it is in their spirit that we gather here fraternally to-day.

The address of M. Duflos was frequently interrupted with applause. Like those preceding, it admirably expressed the spirit of the Congress.

The following list of officers was then unanimously elected:

Presidents: Messrs. Duflos, director-general of the prison administration of France; Beltrani-Scalia, counselor of state, Rome; Galkine-Wraskoy, chief of the administration of prisons, Russia; Pols, professor of the University of Utrecht.

Vice-presidents: Messrs. Braunbehrens, subsecretary of state, Prussia; Holzknecht de Hort, ministerial counselor, Austria; Laszlo, ministerial counselor, Hungary; Lejeune, minister of state, Belgium; Marino, member of the superior council of prisons, Spain; Pessina, senator, Italy; Randall, United States; Ruggles-Brise, director-general of prisons, England; Wieselgren, director-general of prisons, Sweden; Woxen, director-general of prisons, Norway.

General secretary: Dr. Guillaume, chief of the bureau of statistics, Switzerland.

Assistant general secretaries: Messrs. Likatchew, inspector-general of prisons, Russia; Robin, chief of bureau in the interior department, France.

Secretaries: Messrs. Priléjaew, chief of bureau of administration of prisons, Russia; Mouravieff-Apostol, secretary of the imperial legation of Russia at Madrid; Degournay, auditor of the state council, France.

COMPOSITION OF THE CONGRESS.

The Congress was not a mass meeting of individuals. It was made up of 200 official delegates sent by 25 different countries. with the

addition of adherents nominated or introduced by the delegates. It therefore represented not any local interest or sectional spirit, but what truly might be said to be the attitude of modern civilization toward the problems which engage it. In addition to the foreign delegates, the number of French adherents officially enrolled and personally and formally identified with the Congress, though not all present at its sessions, numbered 537, and included many of the most distinguished names in France. This body was made up of jurists, legislators, doctors, sociologists, magistrates, the heads of prison administration, and writers and experts on related branches of applied philanthropy.

SCOPE AND METHOD.

The range of inquiry, discussion, and interest has gradually grown broader. Every subject in any way related to criminology, whether preventive, corrective, or administrative, now comes within the field. As noticed in the previous addresses, one of the things which distinguished the Paris Congress from its predecessors was the great emphasis laid upon preventive work and the establishment of a special department for the discussion of all questions relating to children and minors.

The spectacle of such a gathering of men and women from all parts of Europe and even from Japan to study the whole network of problems which enter into the subject of crime and its treatment was hopeful and inspiring. Philologically the Congress was something of a Babel, but morally it was a Pentecost. Whatever the divergence of ideas and methods, the whole Congress was animated by one spirit. It was a spirit of justice and humanity in search of knowledge and experience, and that is the synonym of scientific philanthropy. Withal, it was animated by a certain hope and faith that banished the specters of pessimism which always haunt the background and sometimes come into the foreground of this theme.

The Congress was divided into four sections. The first related to penal legislation, the second to prison administration, the third to preventive means, and the fourth to children and minors. Separate sections of each session were held in the College of France in the morning. The questions laid down on the programme for each section were discussed and conclusions formulated. In the afternoon a general session of the whole Congress was held in the amphitheater of the Sorbonne, where each section, through reporters appointed by it, gave an account of the spirit of the discussions and the conclusions reached, which were then voted upon by the whole body of delegates.

An outline of the work of each section, the questions discussed, and the conclusions reached will now be given.

FIRST SECTION.

PENAL LEGISLATION.

President: Senator Edouard de Fouks, president of the juridical society of St. Petersburg.

Vice-presidents: Messrs. Foehring, Hamburg; Bensis, attorney-general, Greece; Foinitski, advocate-general, Russia; Senator Pierantoni, Italy; Prof. Carl Stoos, Switzerland; Counsellor Starke, Prussia; Professor von Hamel, Holland; Professor Zucker, Austria.

Secretaries: Messrs. Robiquet, advocate to the council of state and the court of cassation; Garçon, professor of the faculty of law of Lille; Le Poittevin, professor of the faculty of law, Paris; Chapsal, auditor to the council of state.

Associate Secretary: M. Camille Fabre.

THE RELAPSED CRIMINAL.

First Question:

Should a malefactor be regarded as a recidivist until he has renewed the same infraction?

Should the augmentation of the penalty be progressive at each new relapse on his part?

The great plague of penologists as well as of society is the recidivist, the relapsed criminal, the "repeater" or "rounder," as he is more familiarly called in this country. He is the man or woman who has gone to prison half a dozen times, or it may be fifty or a hundred. One of the longest and most animated discussions was on the question of classifying the recidivist and the application of penalties.

The first of these questions as formulated above was theoretical, a question of classification, though not without practical import. The second question was more practical, having for its main object not the definition of recidivism, but the means of repression.

In some countries a criminal who has been sent to prison two or three times is regarded as a recidivist, without reference to the nature of his offense. Under the German system he is regarded as a recidivist only when he repeats the same offense. There are recidivists who are accidental and occasional; there are those who are professional and antisocial. It is the last, whether he be a general recidivist, committing a variety of crimes, or a special recidivist, confining his infractions to a single line, who is the most dangerous. It was only by the appointment of a special committee to sift and amalgamate points in the discussion that unanimity was finally secured. The real problem is to distinguish between the accidental or occasional and the habitual or professional criminal. The report favored a progressive accumulation of penalties and the infliction of more rigorous sentences in the case of professional criminals.

Resolutions:

1. *The relapse may be, according to the gravity of the case, general, special, or subordinate to conditions of time.*

2. *Repression ought to combine in view:*

(a) *A progressive augmentation of sentences except in cases formulated below.*

(b) *The infliction of a more rigorous penalty upon professional criminals.*

3. *Tribunals should not be restrained by the first of these rules* (a) *from recognizing the existence of exceptionally extenuating circumstances in a decision the grounds of which are distinctly expressed.*

The law ought to establish a special minimum to avoid the abuse of short sentences.

4. *In the second case* (b) *the law should fix the number of the condemnations upon the basis of which the courts may decide, according to the nature of the condemnations incurred and the degree of perversity of the agent, whether or not the accused is to be regarded as a professional criminal.*

TRANSPORTATION.

Second Question:

Should transportation, taken in its broadest sense, be admitted in a rational system of repression; and if so, what particular rôle should it be called upon to fill?

The subject of transportation is not now a practical question in the United States nor in England, and the tendencies of modern penology to abandon this system are seen in the fact that the only two countries that now hold to it are France and Russia. In the Congress the warm debate on this subject was almost entirely confined to representatives of these two countries.

Previous congresses have dealt with these questions with caution. The Congress in Stockholm in 1878 did not proscribe transportation, as some of the members desired, but passed the following vote:

The sentence of transportation presents difficulties which do not permit of its adoption in all countries or the hope that it will realize all the conditions of justice.

The Congress of 1890 in St. Petersburg, held in a country where transportation has been maintained for three centuries, said:

Against hardened and rebellious criminals prolonged imprisonment or transportation to territories, or dependent possessions of the country interested, may be employed, but always with the guaranties which ought to surround authority for those who are deprived of their liberty, and with the possibility of regaining that liberty by their good conduct according to a system of conditional liberation.

In 1854 France, after a long and painful experience with defective penal prisons, revised its system, and found new hope in transportation, which was established in Guiana and New Caledonia, an island in the Pacific 25 miles broad and about 240 miles long. It has many

conditions which adapt it for a penal colony. The French system has been in operation for forty years. A system of conditional liberation on the island without the privilege of leaving it, and with remuneration for work for those who are set free, encourages good behavior. At the expiration of the sentence the liberated form a class by themselves, and have many of the advantages of free immigrants. Undoubtedly the French system is carried on under conditions which are more humane and hopeful than the old prison system which it in some degree replaced. It has distinctly in view the reformation of the prisoner. It recognizes the need of a wide administration and superior personality—the need of rewards and encouragements as well as strict discipline. Relegation or banishment to these colonies is a milder imposition of the penalty. Both of the French reporters to the Congress, Messrs. Charles Petit and Charles Babinet, of the court of cassation, Paris, advocated the French transportation system, and maintained that, while under the old system the number of recidivists was 95 per cent, there are only 5 per cent under transportation. It must be remembered, however, that this is a comparison between transportation and the bagnes, or French convict prisons, which the penal colonies replaced. It is not a comparison between transportation and the best modern system of prisons.

The Russian reporter to the conference was Prof. N. S. Tagantzew, of St. Petersburg, professor in the faculty of law, honorary member of the university, and a member of the court of cassation. He is one of the distinguished jurists of Russia. He did not disguise the defects in the administration of Russian transportation. He maintained, however, that transportation combines the essential conditions of intimidating the prisoner, securing the safeguard of society and the correction of the criminal, and that it ought not to be excluded from penal measures. But, since the practical application of transportation, as history and experience can attest, presents serious difficulties, it is only to be recommended for States which offer convenient conditions and in a restricted measure. Transportation should be maintained only in countries possessing territory for its application, and especially where they can not secure the repression of crime by seclusion in prison. Transportation is not a measure to be extended to a great number of criminals without regard to individual qualities. But it is to be applied in accordance with their physical and moral aptitudes for colonization.

When the question came up in the first section of the Congress, the system of transportation was warmly and ably attacked by M. Prins, inspector-general of Belgian prisons. He maintained that emigration alone can establish prosperous colonies, and that colonization effected by criminals has been a failure. Transportation, he argued, is enormously expensive—seven times more than that of imprisonment.

Conspicuous among the Russian opponents of the system was Prof. Ivan Foinitzki, professor of law of the faculty of St. Petersburg. He is one of the highest authorities on penological subjects in Russia, or

indeed in Europe. One volume of his treatise on penology is devoted to transportation, and has just been translated into French by M. Georges Bonet-Maury, of Paris.

Professor Foinitzki examines carefully all the arguments which have been presented in favor of transportation, and rejects them in toto. He declares that transportation up to the present has nothing but negative results to show.

M. Spassovicz, another Russian delegate, showed that Russia had had a rapid growth, but has not yet attained its full development. It was only in 1864 that the judicial powers had been separated from the administrative. Russia is now in the midst of penitentiary reform. Transportation has been a means of banishing different rebellious elements. It has been applied for political offenses, for religious offenses, and even to those of a municipal nature. It is certain that it ought to be transformed radically. But before that there is another duty imposed, which is that of improving its prisons.

The task of defending transportation fell almost entirely upon the French representatives. Its most ardent advocate was Professor Leveillé, of the faculty of law of Paris, who maintained that transportation has two virtues, which distinctly belong to it, that it admits of work in the open air and does not exhaust the condemned, and that it prepares at the same time the reestablishment of the liberated. France had committed some mistakes and the laws had needed revision. The sentence had been weakened by an excess of indulgence, but recent regulations have strengthened it, and have stopped the illegal traffic of speculators in convict labor.

It was evident that only negative conclusions or a compromise could be reached with such a division of opinion. The resolution finally adopted by the section and confirmed by the Congress was as follows:

Resolution:

> *Transportation under different forms, with the ameliorations already realized and those of which it is still susceptible, has its utility, whether for the execution of long sentences for great crimes or for the repression of habitual criminals and obstinate recidivists.*

INTERNATIONAL COOPERATION AGAINST CRIME.

Third Question:

> *Ought a certain effect to be given in a country to penal sentences pronounced abroad?*

This question has been discussed at various conferences on international law held in Europe, and also at the Prison Congress at Rome. No country now executes sentences pronounced by a foreign country. The Prison Congress at Rome said: "The exchange of criminals to undergo in the country of their origin sentences depriving them of liberty pronounced *by a foreign judge* is not practicable, and would not

be desirable." Yet several States may be simultaneously interested in the punishment of the same offense, one because the criminal action has taken place upon its territory, another because the action was directed against its security, or because of the nationality of the offender or the victim. The relations, interests, difficulties, complexities, and possibilities entering into this question were well set forth in the preliminary reports by M. A. Le Poittevin, associate professor of the faculty of law, Paris.

It is manifest that the want of symmetry in different national codes would prevent the balance of justice from working equably. The different speakers who took part in the discussion did not go further than to show how modern nations are interested everywhere to secure the operation of penal justice. To-day malefactors do not recognize frontiers or distances, and may even be organized in international bands. States are less jealous than formerly of their sovereign laws. The different European codes now repress criminal acts in a more uniform manner. Extradition is largely practiced. Certain countries consent to deliver their own citizens, thus confessing that the normal tribunal for an offense is that of the place where the offense has been committed. The old distrust against sentences pronounced in other countries has in part disappeared, and different people representing the same grade of civilization are accepting the authority of a criminal process abroad.

The Congress expressed the opinion that it is desirable that the incapacities which fall upon a person by reason of condemnation pronounced against him from some infraction of common law by the tribunals of his nation should have full force in other countries. Also, that it is desirable that one who is condemned for crime in a foreign country should incur in his own country the same incapacities and deprivations as he would incur if he had been condemned there. In other words, a person who has been condemned as a thief in one country ought not to be allowed to sit in a jury in another or exercise the rights of an elector or fulfill public functions.

In the present state of international law, however, the Congress did not ask that these incapacities and deprivations should be directly incurred as the result of a sentence abroad, but that they might be pronounced as the result of a special action by the tribunals of the country of which the prisoner is a citizen, not retrying the case, but confirming the procedure of the foreign court. Again, it proposed that a judge should take account of the sentences that have been pronounced against a criminal in foreign courts when he is arraigned for some infraction on national territory. Thus, if a professional thief from Berlin or London is caught in this country pursuing the same trade, there seems to be no reason why he should be regarded as a first offender here when it can be shown that he has been condemned two or three times in those cities or is wanted for crimes committed there. In States having a habitual criminal law the recognition of a criminal's foreign career would thus make a great difference in the sentence imposed.

The conclusions were thus formulated:

Resolutions:

1. *It is desirable that the incapacities which a person incurs by reason of condemnations pronounced against him for crime or for violations of common law by the courts of his country should follow him in full force in all countries.*

2. *It is desirable that a native of a country who is condemned for crime or violation of common law in another land should incur in his own country the same disabilities, incapacities, and interdictions as he would incur if he had been condemned there. In the actual state of international law, the Congress does not ask that these disabilities, incapacities, and interdictions should be the direct result of a foreign sentence, but that they might be pronounced as the result of a special action instituted by the courts of the country of the delinquent.*

3. *When a new infraction has been committed on national territory, the judge on fixing the sentence should take account of condemnations pronounced abroad.*

INDEMNITY OF THE VICTIMS OF CRIME.

Fourth Question:

Is the victim of an offense sufficiently armed by modern laws with reference to obtaining the indemnity which may be due to him from the delinquent?

The question shows how ethical elements are becoming prominent in these discussions.

It was felt that modern laws are particularly weak here. In some respects the laws in different countries are harder upon the victim than upon the offender. Thus, in France, while in a case submitted to a jury costs are not assessed upon the complainant if the complaint is sustained, in all other cases the complainant is obliged to defray the costs of the process whether for or against him. It often occurs that the victim is too poor to maintain the expenses of a civil suit. Though the effects of the condemned may be confiscated for the benefit of the injured, the delinquent is often insolvent. It was maintained that a portion of the prisoner's earnings might be applied to advantage in this direction. But this would in most cases be but a small amount unless the sentence were long. It was suggested that a fund may be established by the State, derived from pecuniary fines imposed instead of short sentences, and that the fund thus established might be used for the relief of victims of crime. It was also suggested that restitution might be possible in some cases through the conditional liberation of the offender. The Congress found the subject so important that it recommended to serious consideration the establishment of such an indemnity fund. But inasmuch as it was not wholly prepared to weigh the matter in all its bearings, it decided to commit the subject to the consideration of the next International Congress.

Resolutions:

1. *Penal legislation ought to take more account than it has hitherto done of the necessity of assuring reparation to the injured party.*

2. *When the complaint of the prosecuting party is well grounded he should never be condemned to pay costs.*

The prosecuting party who shall have simply joined his action to that already entered by the public solicitor should, even if he fails, be condemned only to the costs occasioned by his intervention.

3. *The benefit of counsel should be accorded to the injured party in courts for the repression of crime (devant la juridiction de répression).*

4. *The public minister in the case of correctional or criminal suits shall be obliged to submit, without expense, to the jurisdiction concerned, the demand for damages of the injured party, the right being reserved to the public minister, upon the admission or rejection of the demand, to take such action as may seem desirable.*

5. *The indemnity allowed to the injured party shall be guaranteed by a general claim upon the estate and the household goods of the condemned, and that claim shall be made concurrently with that of the public treasurer for the costs of justice.*

6. *The Congress decides that there is ground for taking into very serious consideration the propositions which have been submitted to it with regard to allowing to the injured party a portion of the gains realized by the work of the condemned in the course of his detention, and with regard to constituting a special indemnity fund from which aid may be accorded to the victims of infractions under the penal law; but thinking that it does not possess at present the elements which are necessary for the solution of these questions, it decides to commit them to the more profound study of the next International Prison Congress.*

CLASSIFICATION OF CRIME.

Fifth Question.

Is there ground for maintaining in penal legislation the triple division of crimes, délits, and contraventions? If not, what simplification should be introduced in that division?

Classification of crimes is a comparatively ancient method; the classification of criminals is comparatively modern. In Hebrew, Oriental, and Roman codes we find attempts at the classification of crime, and the estimate of guilt s seen in the varying weight of penalty attached to the offense. No subject has received more attention from modern jurists. Every law enacted by a legislature with a penalty attached becomes a designation of crime, misdemeanor, or contravention. The law and the penalty may be ethical in character or may simply relate to public convenience, like a penalty for obstructing the sidewalk or tearing down an election notice. Modern ideas in regard to the ethical

value and relative enormity of offenses are very different from those of former days. In no respect has the spirit of new Italy been manifested more significantly than in the revision of its penal code. In France, under the influence of Bérenger, great improvements have been made, and in England, one of the most conservative countries in changing its laws, many changes have been effected in the last fifty and even in the last twenty-five years. But the classifications of crime in even the best penal codes are all more or less arbitrary.

If we wish to get an idea how arbitrary they are we may do so without going abroad for the purpose. We may compare the codes of 44 of the States of the United States, as Dr. F. H. Wines has done in a paper prepared for our National Prison Congress, 1894. There we find the most remarkable divergencies in the estimate of the comparative guilt of offenses and the punishment which should be affixed to them. Thus, in Delaware the extreme penalty for counterfeiting is three years' imprisonment; in five of the States it is imprisonment for life. In New Hampshire a perjurer may get off with five years; in Maine he may be imprisoned for life. In Delaware it is assumed that one year is as much as a man deserves for bigamy, but in Tennessee he may get twenty-one years. The value of a nose or eye in Georgia is a year and a half in a jail or chain gang and a fine of $1,000; in Colorado it is worth three years' imprisonment, and in Vermont imprisonment for life. Thus we might go through the catalogue of crimes in the different States. The contradictions presented are remarkable, and as a study in comparative ethics are very curious. Under the Hebrew law of an eye for an eye and a tooth for a tooth the matter was much simpler; but when it comes to measuring the money value of an eye or a nose or the length of imprisonment which forms an equivalent for its destruction it is not easy to secure unanimity.

In France and in many other countries there is a threefold division of crimes, délits, and contraventions, as there is recognized generally in this country a distinction between crimes and misdemeanors. The Congress reaffirmed the utility of such a threefold division. It may be useful to some extent to classify crime according to the nature and character of the offense, especially on broad and general lines, such as the distinctions between violations of civil and criminal law, offenses against property, and offenses against persons; but the difficulty is in the adjustment of any scale of penalties. When the penalties are arranged on a sliding scale and a great deal of liberty is allowed to the judge in applying them, the difficulties avoided in framing the law reappear in its adminstration. Thus, while each State has a fixed criminal code and a maximum and minimum of penalties, a study of the sentences actually imposed shows the most curious variation and contradictions. The estimates of the comparative enormity of offenses made by prisoners themselves is sufficiently curious, as when the drunkard boasts that *he has not* been a thief and the thief boasts that

he has not been a drunkard; but ethical judgment of criminals are hardly more contradictory or amusing than those which have been framed into our laws and which are revealed in their administration. When it comes to the application of the penalty the only final relief for arbitrariness is in the adoption of the indeterminate sentence. On this subject the International Prison Congress shed less light than has been thrown by our National Prison Congress, in which the subject of the indeterminate sentence has been fully developed and expounded.

While in France the tripartite division prevails, in Holland and in Italy a bipartite division has been adopted. These divisions are of course theoretical, and though they assist in the classification of crimes are not of the greatest importance in the classification of prisoners.

Resolutions:

1. *The bipartite division is scientific and rational.*

2. *There is no reason for asking the States which have adopted it to abandon it.*

3. *But it may be useful to establish a correlation between the classification of infractions and the classification of jurisdictions. When to reach that correlation it is necessary to subdivide the first category of infractions under the name of major and minor délits, or even of crimes or offenses, the tripartite division has a practical character which justifies its maintenance.*[1]

Sixth and Seventh Questions:

These questions, relating to vagabondage and prostitution, were transferred from the first section to the third, and the resolutions adopted are given in the report of that section.

CONDITIONAL LIBERATION.

Eighth Question:

For what kind of infractions of penal law, under what conditions, and in what measure is it desirable to admit in legislation—

(a) *The system of admonitions or remonstrances addressed by the judge to the wrongdoer and taking the place of condemnation?*

(b) *The mode of suspending a sentence, whether of fine or imprisonment, or such other sentence as the judge may pronounce, but which he declares is not to be applied to the prisoner so long as he does not incur a new condemnation?*

ADOPTION IN EUROPE OF CONDITIONAL LIBERATION.

In the preliminary reports of the Congress, Signor Pessina, professor of law in the University of Naples, pays a grateful acknowledgment to Massachusetts as having first put into operation and developed the

[1] As the French divisions of crime do not have a corresponding meaning in the *United States*, the words infractions, crimes, délits, and jurisdictions aret left *untranslated.*

system of probation. He gives a brief outline of the Massachusetts system, which he shows has been followed by salutary fruits. The system has been introduced in Australia. The Howard Association of London conducted a campaign in favor of it in England, which resulted in the adoption of the first offenders' act. According to English law, probation is applied only to those who have never before incurred a sentence, and it is not applied when the sentence is for more than two years. The distinguished jurist Bérenger, of France, presented a somewhat similar law to the French Senate in 1884, but it did not become a law in France until 1891. Belgium adopted the same system in 1881. In the French and Belgium system the legal process is never suspended. It is always the sentence alone that is suspended, and in the French system in case of a second condemnation within five years the first sentence holds good and must be executed.

This principle, which has met with opposition from some prominent European jurists, has also its strong advocates, and in the preliminary reports made to the Congress we find it urged by the representatives of France, Russia, and Italy. It has found an opponent in Professor Kirchenheim, of Heidelberg. It has also been opposed by Professor Pols, of Holland; the former, not without reason, complaining that those who have imitated the Massachusetts system in Europe have left out its most important feature—that of the surveillance exercised by the probation officer. The opposition to this, as well as to many other reforms in penal legislation, is often based on purely theoretical grounds. Massachusetts has now a solid basis of experience, and the new method has already gained such a hold in England, France, and Belgium that it is not likely to be abandoned. It is only a question of time for it to find a permanent place in the judicial system of all civilized countries. The custom of letting certain criminals go after a brief admonition by the judge is a very old one. It goes back to Roman times. But the custom of conditional condemnations or probation as distinct from mere admonition is a modern development, and it helps to distinguish between the accidental and the professional criminal—to give the first an opportunity to recover his footing and to show the second that he can have no footing whatever. Since the adoption of the law in Belgium seven years ago 132,000 conditional condemnations have been made, and of this number the proportion of recommitments has been only 3 per cent.

As the experience of Massachusetts had been invoked on this subject, two of the American delegates, Messrs. Lewis and Barrows, presented facts and arguments bearing on the question.

THE PRINCIPLE OF PROBATION ADDRESS BY MR. CHARLTON T. LEWIS.

In an address delivered at a general meeting of the Congress July 8, Mr. Charlton T. Lewis, official delegate of the United States and president of the Prison Association of New York, said:

Many of us are sorry *that the eighth* question of the first section has

not been made the subject of more discussion at this Congress. I do not hesitate to affirm that this question is of the highest importance and second in its claims upon our attention to none of those which have been considered. But if it were to be studied in all its aspects it would call for the exercise of all the ability and learning of every member present.

To understand clearly the problems presented by this question it would be necessary to investigate the history of prisons and the origin of the system of legislation by which offenses are classified and a penalty is assigned to each of them, founded on some supposed estimate of their comparative desert. Such an investigation would disclose the fact that this system has really grown up at random and does not rest upon fixed principles.

Until very recent times the object sought by imprisonment was to prevent the offender from escaping or from doing further injury, and was not associated with the idea of punishment. There is nothing in the nature of a prison to satisfy the instinct of retribution. Society used to inflict on malefactors death, mutilation, or physical pain in various forms, exile, forfeiture of goods, or fines, disqualifications, and humiliations in many forms, but prisons were used merely to detain persons whose presence at a future time was desired, or else to restrain them; but since under the pressure of public opinion the infliction of mutilations and flogging have been rejected as inhumane and the death penalty has become extremely rare, the convenient custom has gradually grown up of imprisoning delinquents, and the ingenuity of legislators has devoted itself to the useless and absurd attempt to ascribe to each crime or offense a term of confinement graduated according to its supposed enormity.

On principle, nothing justifies the imprisonment of a man except satisfactory proof that his freedom is dangerous for society. Now, if we accept this principle, two consequences follow logically from it.

First, that none should be imprisoned except those whose liberty would be a danger for society. Second, that these should be imprisoned, not for periods of time fixed in advance, but just as long as their freedom would be a danger for society.

The second of these conclusions is the principle of the indeterminate sentence, a principle upon which all recent progress in the theory of penal legislation depends, and from which future improvements in it are to be expected. Every country represented in this Congress now sends to prison multitudes of persons for a fixed number of months or years, according to the name given by law to the particular offense of which each is convicted. This is no more scientific than if the sick were sent to a hospital for a number of days determined in advance by the temperature or the pulse at the invasion of the disease. We send only the sick to the hospital. The necessity of sending them must be established by a thorough inquiry, and if it is once proved, the sick

must be detained there until they are cured. And the analogy is a fair one by which it is contended that no man should be imprisoned until it has been ascertained that he is of a criminal character. And when this is known he must be imprisoned until he is reformed or until he dies.

But the first of the two conclusions which I have named is of still higher importance. To imprison a man is to impose upon him an utterly unnatural life, apart from human society, cut off from the influences and associations which form the mind and character and offer scope for their healthy action and development. It is to consign him to companionship of all that is vilest in the human race; it is to mark him for life as a person unfit for freedom and for association with his kind, and to deprive him after his release of most of the sources of hope and energy which alone could save him.

The force of this influence is so great that few overcome it. The criminal class is everywhere made up of men who have received their education in prison. Prisons are the universities of crime, whose pupils are everywhere the enemies of society. They are, then, an evil—perhaps a necessary evil, but one whose necessity should be accepted with caution and whose use should be restricted within the narrowest possible limits. If this Congress should devise a method of protecting society against crime to the extent to which prisons are supposed to protect it, while actually confining none but confirmed criminals, it would truly merit a share in the glory of the Savior of men.

The State of Massachusetts has for several years had in force a law which seems to be a step toward such a revolution as this in penal codes. When a person is convicted of crime for the first time, the judge has the power to discharge him without a sentence of imprisonment, but retaining him under supervision provided by the law. Certain men of upright character, of much experience in dealing with criminals, and of sincere philanthropy, are appointed by the court as probation officers. It is their duty in each case of a first offense to investigate not only the criminal act itself, but the life of the offender, his family, his habits, his occupation, and his history. If it appears, on a careful review of all the facts, that there is a strong probability of his reforming and that he will live and support himself without crime, the probation officer may recommend to the court that the offender be permitted to return to his home and to his work under the supervision of the probation officer. He must report from time to time to that officer and prove to him that he is living an upright life, without bad associates, and is sober and industrious. If he succeeds in this for the time which the court has fixed as that of his probation, the court may entirely remit his sentence and give him a final discharge. But if during his probation he is discovered to be idle, drunken, and vagabond, to associate with criminals, or, in the judgment of the probation officer, to be in danger of committing further offenses, that officer must arrest him

and bring him again before the court, to be sentenced for his original offense.

In Boston and several other cities faithful and intelligent men have been found to serve the community as probation officers. The results are most encouraging. The proportion of offenders once condemned and imprisoned who become permanent members of the criminal class is well known to be very large. The proportion of persons released on probation who fail to comply with its terms and become liable to imprisonment for the original offense is surprisingly small. I have made several attempts to collect complete statistics, and hope one day to present to the members of the Congress the detailed evidence, but for this occasion it is enough to affirm on the united testimony of the authorities engaged in administering this law, that the new system is rapidly diminishing the number of criminals, and promises to do much toward rendering prisons unnecessary.

The extent to which this principle can be applied is as yet unknown. Only experience can determine its proper limits. But it has awakened hopes sufficient to justify the profound study of this experiment on the part of all those who know the evils caused by prisons in making men corrupt and criminal; and some go so far as to hope that ultimately the greater number of the prisons of the world may be dispensed with, and that civilized society will learn, by completing and extending such measures as these, that its highest duty toward offenders is not punishment or vengeance, but reform.

THE PROBATION SYSTEM IN MASSACHUSETTS—ADDRESS BY SAMUEL J. BARROWS.

Samuel J. Barrows, secretary of the American delegation, said:

One of the most distinctive features of the penal system of Massachusetts is the introduction and extension through the State of the probation system.

This system proceeds on the assumption, well supported by experience, that many persons who are arrested may be saved from a life of crime if sentence is suspended and the convicted person has another opportunity to become a law-abiding citizen before the stigma of prison life is fixed upon him. Previous to 1870, when this assumption was framed into a law, it was occasionally the usage to release persons convicted of crime on the application and assurance of certain individuals who were interested in their reformation. In 1878 this function was partially assumed by the State. A law was passed providing for the appointment of a probation officer in each city and town. This law was permissive, not mandatory. Many towns and cities did not avail themselves of the privilege. It was, however, adopted in Bost
years the system was confined to that city. The pro
the late Edward H. Savage, formerly chief of pol
ever, was much too large for a single officer at
1888 two additional officers were appointed for t

In 1891, largely through the instrumentality of the Massachusetts Prison Association, a law was passed requiring the appointment of a probation officer in each municipal, police, or district court in the State. The officers are appointed by the judge of the court and the expense is borne by the county. There are now fifty-eight probation officers in Massachusetts. The central municipal court of Boston has seven probation officers—a chief and six assistants. One of these is a woman, Miss Hannah M. Todd, appointed under the provisions of a special act of May, 1892, who has furnished and stated much of the information that follows.

The work of the probation officers is of two kinds:

First. Investigation.

Second. The visitation and the oversight of those who are placed on probation.

1. Investigation.

All arrested persons are seen by the probation officer before they come into court. Kindly inquiries are made as to their families, home, occupation, condition. The investigation is not made to obtain evidence for establishing guilt, but, by furnishing information as to the general character of the individual, to assist the judge in making his decision. After interviewing the prisoner an investigation is made outside to determine the truth of his statements. This investigation is often superficial, but usually enough information is obtained to enable the judge to act intelligently. In important cases an extension of time is granted to complete the investigation. Registration is made by the probation officer of the facts secured and they are properly catalogued by a card system that may be available at any time for the information of the court.

2. Visitation and oversight.

After investigation the trial occurs and sentence is pronounced. If the individual is put on probation, the sentence of the court is simply deferred. It may be imposed at the expiration of the term of probation, or the probationer may be surrendered and sentenced before the time expires. During the probation visits are made by the officer as often as once a week; friendly personal relations are established. Probation officers may also aid in securing employment, in assisting probationers who are away from the city, and in getting friends to interest themselves in their behalf; endeavoring to develop their moral sense, to strengthen the character, and to remove them from bad associations. The application of the probation system gives an opportunity to apply special treatment to individual cases.

[illegible] duties of the female probation officer are confined to female con[illegible] and a[illegible]sentially the same.

3. Length of probation.

In smaller places the term has been about one year. In the central municipal court the term is about five weeks. This is too short a time, says Miss Todd, to gain influence or to decide if the probationer is doing well.

At the expiration of probation the case may be disposed of in one of four ways: First, by extension of the term of probation; second, by surrender or by sentence; third, the case may be defaulted by non-appearance at court; fourth, the case may be dismissed.

For each continuance of the case a reappearance in court is necessary.

4. Probation in intemperance.

A few years ago many arrests were made in Massachusetts for drunkenness. This led to the application of the probation law to cases of drunkenness by a special act with particular provisions. The law provides that persons arrested for drunkenness may make to the officer in charge of the place of custody in which he is confined a written statement addressed to the court having jurisdiction of the case, giving his name and address, his place of employment, what persons are dependent upon him for support, and whether he has been arrested for drunkenness before within twelve months. If the arrest was made within the jurisdiction of a court having a probation officer, that officer must inquire into the truth or falsity of the statement. On his report the court may direct that such person may be released from custody without arraignment. Or if it is found that he is an habitual drunkard he may be arraigned and sentenced. The probation officers assist the court by obtaining information as to previous arrests, convictions, and imprisonments.

These intemperance cases add greatly to the work of the probation officers. In the central municipal court of Boston 7,246 cases of drunkenness were especially investigated by the probation officers of that court during the year ending September 30, 1894, out of a total of 9,104 cases in the entire State. This work at the central court is still done by seven probation officers. The result of the law has been the imposition of longer sentences for habitual drunkards, while occasional offenders have every opportunity to reform.

The whole number of cases referred to be investigated by probation officers during the last year was 47,249, of which 15,607 were from the central court of Boston. Of this whole nnmber of cases investigated 5,317 were put on probation. Of these, 1,180 were placed in charge of the probation officers of the central municipal court of Boston. Of this latter, 461 were women, and were placed under the charge of Miss Todd. Most of the women are arrested for drunkenness and prostitution. It is seldom that a woman is arrested for drunkenness who has *just begun to* use intoxicating drink.

Miss Todd says:

Many of those coming under our care are deficient in mental qualities, and have almost no moral perceptions. They follow any path open to them as long as it does not call for the exercise of any power of resistance. Still others are broken down from overwork and trouble and are in sore need of friendly help and strength. By the means of probation a person taken early on the downward career, when the vices are more largely tendencies than habits, can usually be influenced to a better life. Under probation there is every incentive to do well, as the sentence of the court is only suspended, and though under the surveillance of the court the probationer is under a moral restraint only, and this gives opportunity for the exercise of self-control and a motive to enter on a new life away from old associations. While we can not expect that the habits and tendencies which have made a person a criminal or a delinquent will be overcome in a few weeks, we do find that in many cases the possibility of imprisonment arouses them to a sense of their danger and shows them whither they are drifting.

The value of probation depends largely on the amount of personal effort and interest which the officers can put into it; it is important to see frequently those placed in our care, as often as possible in their own homes or at their work, so that we may touch their daily life and bring to them fresh spirit and influence. These visits should be made in a friendly spirit, not to find out all the unfavorable things about the probationers, but to help them to regain confidence in themselves, and to brighten up their lives a bit.

A judge in one of our suburban courts says:

I am impressed more and more every day with the importance of the probation officer. His work does more to prevent the weak from falling and to build up the unfortunate than most people have any idea of.

The first section then concluded its deliberations by passing the following resolutions, which, with the previous ones, were ratified by the general assembly.

Resolutions:

The application of admonition by the judge, and that of the suspension of the sentence after condemnation, lead to almost identical results. In consequence, it is unnecessary to add the system of admonition to that of the suspension of the sentence.

Those systems of legislation which permit tribunals for the repression of crime to grant a suspension of sentence to first offenders, condemned to short sentences, comprise the best provisions known.

SECOND SECTION.

PRISON ADMINISTRATION.

President: M. Goos, inspector-general of prisons, Denmark.

Vice-Presidents: Gen. R. Brinkerhoff, president of the National Prison Association, United States; Professor Brusa, Italy; M. Dunant, president of the council of state, Geneva; Director-General Gripenberg, Finland; Director Ogawa, Japan; Professor Prins, Belgium; Mr. Spearman, magistrate, England; Director Stevens, Belgium; Senator Zakrewsky, Russia.

Secretaries: MM. Fournier, Granier, Budin, general inspectors to the minister of the interior.

Bouillard, chief of bureau under the minister of the interior.

Assistant Secretary: M. Gramaccini.

The programme of the second section embraced many important questions, such as the accurate identification of prisoners, regulations for prisons for women, the subject of prison labor, the compensation of prisoners, and other related themes.

IDENTIFICATION OF CRIMINALS.

The question of the identification of convicts or those under arrest is of great practical importance. It came before the Congress in the

First Question:

> *Is there occasion to generalize and unify methods of anthropometry and to examine the conditions under which an understanding might be recommended in this respect?*

The members of the Congress had an opportunity to see the working of the system invented by Dr. Bertillon, of Paris. It substitutes for the old-fashioned extemporaneous method of identifying a criminal through the treacherous memory of prison officers, policemen, or witnesses, a scientific and practically exact method of measurement which, together with photographs, constitute a complete identification of any person who may be subjected to them. Its utility is not confined to the identification of criminals who reappear at the same court or at the same prison. By a system of exchange between different States and countries, it may be used to identify criminals who go from one place to another. In our own country prisoners may easily transfer their operations from State to State, but with the Bertillon system in general use it would be possible to distinguish these habitual criminals from first offenders, and sentence them under habitual criminal laws. Communication is now carried on between police agents of the large cities, but identification has been based too much on photographs and crude, unscientific methods. The Bertillon system has already been partially introduced in some States of this country. The value of an

interstate and international system of this kind is beyond question. The Congress recognized this fact and passed the following

Resolution:

It would be of great advantage to reach some prompt international agreement as to the unification of anthropometric processes.

PRISONS FOR WOMEN.

Second Question:

Is it well to apply to prisons for women special regulations possibly very different from those established for male prisons in respect to work, discipline, and dietary?

Is it well to apply to women a special system of penalty?

This question gave an opportunity for some of the women delegates to the Congress to give the result of their experience and observation. There were warm advocates for the separate system for women as for men. But we suspect that if the delegates could have seen the women's prison in Massachusetts and learned the remarkable results there obtained, faith in the separate system as the best method except for a very brief period at the beginning of the sentence would have been greatly shaken. Certainly the people of that State have no reason to change the present method of administration, which is based distinctly upon the reformatory idea.

Resolution:

It is equitable and necessary to provide in the regulations different prescriptions for men and for women, as well from the physical point of view as from the moral and intellectual.

Cellular imprisonment should be applied during the time of arraignment. The principle of cellular imprisonment ought to be adopted for women, whatever may be the duration of the sentence.

PRISON LABOR.

Third Question:

Should we admit sentences privative of liberty in the course of which work is not obligatory?

Is not work in all prisons indispensable as an element of order, preservation, moral power, and health?

The need of manual labor in all prisons as an element of order, hygiene, and moral power was strongly affirmed by the Congress, as it has been affirmed by our own national association, and indeed by every experienced prison warden the world over. No principle ought to be more firmly embedded in the public mind. All the reporters to the Congress were unanimous in their opinion on this subject.

Resolution:

Manual labor ought, as a general rule, to be obligatory in all sentences involving a privation of liberty.

COMPENSATION FOR PRISONERS.

Fourth Question:

Have prisoners a right to wages? Should the product of labor be employed at first to cover the expenses of subsistence of all the prisoners of the same category, reserving for each of them a fixed part of the product and giving, under the title of recompenses, gratuities to the more meritorious?

The tendency and indeed the practice in Europe to-day is to give to prisoners a share of the product of their labor. Whether this share shall be called wages or a gratuity is not merely a matter of nomenclature; it is a matter of principle. Just how people may divide on a principle while they are perfectly willing to unite on a fact was seen in one of the most exciting and prolonged debates of the Congress, on the question whether a prisoner had a right to wages. It was not the wages but the right which was the subject of dispute. It was a question of ethics over against a question of expediency or of practical administration. An eloquent minority maintained the right of the prisoner to receive compensation for his labor, and, what rarely happened, the Congress became very nearly divided on the matter. Of eleven reporters of different nationalities who had written on this subject preliminary to the meeting, five were in favor of the right of the prisoner to wages, six admitted only gratuities as recompenses for good conduct and work. Monsieur Paul Cuche, of the Société des Prisons, in his review of the sections of the Congress, has said:

Everybody was practically agreed that it is indispensable to any good penitentiary régime that it should recognize the efforts of the prisoner through some remuneration. If the prisoner is not stimulated to work by the alternative play of recompenses and of punishments we might prevent him from being idle by the menace of chastisement, but we could not make him an industrious man, for in taking away the hope of gain we have deprived his productive activity of its principal resource.

Penitentiary work to be moral in its effect must be paid, but shall this remuneration be in the form of wages or a bounty? Shall the prisoner who works have a right to exact from the State recompense for his work upon the basis of a determined tariff? Or shall pecuniary encouragement be accorded rather with reference to the moral value than with reference to the industrial value of his efforts? It was seen that the concession of the prisoner's right to wages would carry with it a good many other rights which the Congress was not prepared to concede and which it might be dangerous to affirm; and the result of this, perhaps the most animated debate of the Congress, was finally the passage of the following vote:

Resolution:

The prisoner has no right to wages, but it is for the interest of the State to give him some recompense. The remuneration assigned the prisoner should not be left to the decision of the administration, but fixed by general rule.

This decision of the Congress, as already said, is in conformity with the actual practice which exists in most of the countries in Europe. The system now exists in France, Belgium, Italy, Switzerland, Denmark, Austria, Hungary, Norway, Sweden, Russia, and has just been introduced in Japan. It is customary in these countries to place a certain amount, depending upon his labor and good behavior, to the credit of the prisoner. This amount is generally divided into two portions, not always equal portions, one of which he may spend while in prison under the supervision of the administration to add to his comforts or to send to his family. The other portion is reserved to the time of his discharge. In France, at the Maison Centrale, at Melun, the average wages of the prisoner is 1 franc 78 centimes, or about 35 cents a working day. A three-year prisoner has to his credit on leaving an average of $50, a four-year prisoner an average of $70, a five-year prisoner an average of $90. At the Maison d'Arrêt, of Rouen, the average recompense per day is from 50 centimes to 1 franc 25 centimes—say, from 10 to 25 cents a day. At Poissy, in France, the amount given to discharged prisoners from their earnings is for one year about 81 francs ($16.20), for two years 187 francs ($35.40), for five years 562 francs ($112).

During the discussion figures were cited by the director of a central prison to show that certain prisoners gained from 5 to 7 francs a day, and one man had actually gained 15 francs, or about $3 a day. Representatives from Switzerland and Belgium showed that such extremes could not occur in their country. In some countries the amount which the prisoner has at his discharge is extremely small. In England, the prisoner is not credited with remuneration on the basis of his work, but receives certain rewards which may be available at his discharge. He receives 10 shillings on leaving a local prison. On leaving a convict prison, where the sentences vary from three years to life, the highest amount available on discharge is £6.

The practice of assigning to prisoners a small portion of their earnings has been introduced in a few States in this country. It is a method which needs a much wider application, that the prisoner may have the advantage of a healthy stimulus to labor, and be able to apply some of his earnings to the relief of his family. In the Eastern Penitentiary, Philadelphia, the salutary results of this system, both for the prisoner and his family, have been amply proved. At the time of the Johnstown disaster the prisoners contributed over $500 to the relief of the distressed survivors.

THE MULTIPLICATION OF RECOMPENSES.

Fifth Question:

> *With the aim of influencing prisoners rather through hope than through fear, is it advisable to multiply recompenses?*

While recognizing the fact that a prisoner should be influenced more by *hope than by fear, the Congress* did not recommend the multiplica-

tion of rewards or anything which would interfere with the strictness and equality of prison discipline.

Resolution:

Without discussing the question of penitentiary systems, the Congress does not think it desirable that recompenses should be multiplied.

PUNISHMENTS.

Sixth Question:

In what form and under what conditions should disciplinary punishments be pronounced and applied?

One of the best reports on this subject was furnished by M. Albin Uhlyarik, director of the penitentiary of Sopron, Hungary, who maintained that disciplinary penalties ought always to preserve a humane character and have for their end the correction of the individual and never impair his health by too rigorous measures. Intermittent and capricious indulgence is as harmful as a too exacting rigor, which, dictated by passion, is nearly always unjust, and naturally engenders bitterness and impassability in the prisoner. The individual character of the prisoner ought always to be studied before applying discipline. M. Uhlyarik believed strongly in the cellular system. Corporal punishment has been long since banished in Hungary, and M. Uhlyarik does not desire its reestablishment, yet he desired the extension of disciplinary punishments. In the majority of cases the punishments in existence are usually effectual, but in the case of obstinate resistance a cage, such as that employed in Saxony, is necessary. Irons, chains, and the camisole should only be employed during some hours. We can conceive of a disciplinary punishmemt more strict than that now employed which can be applied long enough to reduce the recalcitrant prisoner and force him to submit absolutely his will to that of his superiors, but which shall not impair health or lead to suicide.

After a discussion of various methods the section passed the following

Resolutions:

1. *Regulations posted in the prison ought to warn against the principal infractions and indicate the different penalties.*

2. *The penalty ought to be pronounced after serious inquest and after having heard the prisoner.*

3. *The sentence ought to indicate the time the penalty must be endured.*

CLASSIFICATION OF PRISONERS.

Seventh Question:

In the interest of general discipline and the reformation of criminals is it better to make a selection of the best or of the worst?

The subject of the classification of prisoners is at the basis of all prison management. Where there is no attempted classification and

prisoners are indiscriminately thrown together the evil communications which corrupt good manners are soon evident. M. Steven, of Belgium, an ardent advocate of the cellular system, did not lose his opportunity to urge its advantages. Isolate the condemned and the question is settled. But it may be added that such a method is not classification, but isolation, and that it is physical, not moral. In the graded system and the reformatories, of which Elmira, N. Y., is the oldest and most prominent example, the character of a prisoner under a system of marking and grading soon determines his classification, and under a wise prison system habitual criminals will not be committed to the same institutions as first offenders.

Resolution:

In the interest of general discipline and of amendment it is better to make a selection of the worst.

THE CRIMINAL INSANE.

Eighth Question:

Upon what principle should the duration of sentences be calculated in the case of criminals afflicted with mental alienation?

1. *When they are shut up in special quarters under penitentiary administration?*

2. *When they are transferred to insane asylums, properly so-called?*

That is to say, when a criminal, in the course of his sentence, is attacked with insanity and put in an asylum, ought the time passed there to be counted in estimating the length of his sentence? A voluminous report was made by M. Paul Fournier, inspector-general of the administrative service of the department of the interior of France, who presented a large amount of information concerning the regulations and usages of different countries. In the discussions the majority of speakers took the ground that the time spent in an asylum, whether within or without the prison administration, ought to be counted as part of the duration of the sentence. The question was pertinently asked, Why should there be any distinction between physical and mental maladies? A prisoner who is sick and in the prison hospital does not have, on recovering, to make up the time thus spent, and why should one who suffers from mental malady, one of the most unfortunate of all diseases, be subjected to a more severe régime? In most countries under modern laws, as appears from M. Fournier's report, if an insane prisoner recovers his health before the expiration of his sentence he is returned to the prison from which he came to complete his sentence. But if recovery does not take place until after the expiration of the time of sentence he is then set free. Figures furnished by M. Monod, of Paris, showed that in the period of five years from 1886–1890, 600 criminals escaped condemnation on the ground of insanity. It also appears that insanity among the prison population is much greater than it is outside. The percentage of the insane in the free pop-

ulation of France in 1886 was 0.40; in the prison population, 4.26. In 1887 the figures stood 0.39 in the free population to 2.94 in prison; in 1888, 0.39 to 4.01; and in 1889, 0.42 to 4.07.

Resolution:

In calculating the duration of the imprisonment of criminals afflicted with mental alienation, the time spent in an asylum for the insane, or in insane wards of prisons, should be reckoned as part of a prisoner's sentence. If the law grants a reduction of the time of imprisonment fixed by the sentence on condition that it shall be served in solitary confinement, the Congress is of the opinion that the insane prisoner should continue to profit by this privilege even though during his dementia he has been placed under a congregate régime.

The Congress is of the opinion that in the programme of the second section of the Sixth Congress the two following questions shall be included:

1. *What rule shall be adopted to insure the possibility of permanent medical supervision of the mental state of prisoners?*

2. *How should asylums or quarters for insane prisoners be organized so that the exigencies of treatment may be combined with repression of crime?*

PHYSICAL EXERCISE IN PRISONS.

Ninth Question:

Has sufficient account been taken thus far in the régime of prisons of the influence of physical exercise with reference to the reformation of prisoners?

This question received more attention in the preliminary reports than in the discussions of the Congress. M. Bailly, director of the Central Prison of Gand, Belgium, maintained that sufficient attention has not been paid to physical exercises. One reproach passed upon all prison systems, whether separate or congregate, has been that they have a debilitating effect upon the organism of the prisoner. This result has been attributed by some to the lack of alimentation, by others to the deprivation of liberty or to the absence of ventilation. There are those who maintain that this debilitating action is more apparent than real, and that it is to be traced to the low organization of the prisoner. M. Bailly proposed a system of gymnastics which could be applied without the establishment of a gymnastic hall in prisons, but by means of exercises simple and practicable. Dr. Baer, physician in chief of the prison at Plötzensee, Prussia, maintains that we have not sufficient information as yet to make a just comparison between the health of prisoners in the penitentiaries of different countries, and above all to compare the health of prisoners with that of the free population. But he concludes that the mortality of prisoners is determined by two factors—first, the régime of the prisons, and secondly, the organic

peculiarities of the social class which furnishes the larger number of prisoners. The great majority of the prison population is composed of individuals belonging to the most indigent classes, whose mortality is higher than among the more prosperous classes. Nevertheless, the sentence of imprisonment involves elements pernicious to health.

Attention was called by M. Kazarine, of St. Petersburg, to the gymnasium and physical exercises conducted at the Elmira Reformatory, New York, as well as to the military régime established there. With the exception of the Elmira Reformatory, physical exercises in nearly all prisons are confined to the promenade and the movements necessary to the execution of the hand labor of the prisoner. M. Kazarine recommended recourse to appropriate physical exercises. M. Gramaccini believed the best exercise was obtained in work at different trades. Dr. Curti, director of the penitentiary of Zurich, also believed that the activity of the muscles should be developed through labor, and that care should be taken in introducing prison industries to consider their sanitary effect. In establishing a penitentiary a sufficient quantity of land should be obtained to conduct some forms of agricultural labor, or if this is not always practicable a penal colony may be founded where prisoners adapted to that work can devote themselves to agriculture for a longer or shorter time. There were other advocates of physical culture. But M. Stevens, of Brussels, maintained that sufficient account was already taken of physical exercises in the régime of prisons and that it is not desirable to increase it.

The question was carried into the general assembly, where the following resolution was passed:

Resolution:

> *It is desirable that work rather than gymnastics should be relied upon in the reformation of prisoners.*

A proposition by M. Kazarine that owing to the interest which the question of physical exercises has awakened, and notably in America in the Elmira Reformatory, this question be inscribed on the programme of the next Congress, was passed by a large majority.

AMERICAN PRISON SYSTEMS BY GEN. R. BRINKERHOFF.

At the general session of the Congress held in the Sorbonne July 8, 1895, Gen. R. Brinkerhoff, of Mansfield, Ohio, president of the American delegation, gave the following address:

I have been requested by the general secretary of the Congress, Dr. Guillaume, to give, on behalf of the American delegation, a brief account of the reformatory methods peculiar to our country, and especially of the Elmira system, which is now being extended rapidly to all our States.

Curiously, the three great prison systems of the world originated in America.

(1) The separate system, which has been so eloquently advocated in this Congress, and so largely adopted in Europe, had its beginning in Philadelphia over sixty years ago. It still exists there, and is admirably administered, but it has been abandoned in all other prisons in our country. We do not believe in it, except for prisoners awaiting trial, and, to a very limited extent, in exceptional cases, for others.

(2) The congregate system of associated labor by day and cellular separation by night had its origin in Auburn, N. Y., over fifty years ago, and is now universal in America for all life prisoners, and for recidivists and incorrigibles.

(3) The Elmira system is based upon the indeterminate sentence and conditional liberation. Such liberation is known as a parole, which is obtained through a marking system of merits and demerits, and a progressive classification.

This system is applied only to young men under 30 years of age, and convicted of felony for the first time. It had its beginning at Elmira, N. Y., in 1876, under the administration of that prince of penologists, Mr. Z. R. Brockway, and its results everywhere have been exceedingly satisfactory, and results, after all, are the crucial test of any system.

Elmira now has over 1,200 prisoners, which is 400 more than any reformatory prison ought to have, and for ten years past it has had over 800, and yet a careful record of all prisoners discharged shows that of the whole number 82 per cent reestablished themselves in society as honest and respectable citizens.

The methods of administration by which these results were attained I will not now attempt to present for the reason that we have with us Maj. R. W. McClaughry, of Illinois, who has had large experience in the administration of the Elmira system, and also of the Auburn system, who will follow me on this platform with a brief statement and will answer all questions you may care to propound to him in regard to it.

The prisons of the United States, so far as I have been able to compare them with those of Europe, stand well. In dealing with short term prisoners, and with prisoners awaiting trial, and also in dealing with discharged prisoners, Great Britain and Ireland are far ahead of us, but beyond that we are not afraid to invite comparison, and in some respects I think we are in advance.

In Europe deterrence and repression seem to be the dominant ideas in dealing with the criminal classes, but with us they are reformation and prevention. We have repudiated the lex talionis idea of an eye for an eye and a tooth for a tooth. In the days of Moses, under the conditions then existing, it doubtless was the best system attainable, but we of this day and generation are living in the Christian era, under the teachings of the Divine Nazarine, in which love, and not hate, is the governing idea.

In dealing with criminals, therefore, the dominant idea in America *is the protection of* society, and any infliction upon a prisoner with any *other motive in* view is an outrage upon the inalienable rights of man.

We believe in deterrence by severity also, if that alone will protect society, and therefore, in Ohio, when a man is convicted for a third time for a felony we adjudge him an habitual criminal, and send him to prison for life. So also for misdemeanants, who are mostly chronic drunkards, we have recently enacted a law which provides for a first offense a penalty in the discretion of the court; for a second offense the penalty must be double that of the first; for a third offense a penalty double that of the second; and for a fourth offense, imprisonment for three years, with the privilege of parole for good conduct.

Upon the whole, however, we believe that prevention and reformation are the roads we must travel if we are to make any large progress in the reduction of crime. Therefore we are adopting the Elmira system for the reformation of adult criminals, industrial training for juvenile offenders, and the probation system for misdemeanants convicted of a first offense.

For juvenile offenders we now have about seventy reformatories or industrial schools, as they are usually called, from which the graduates average fairly as good citizens as those from our public schools.

But more than all these, we believe in prevention, by giving to all children in our common schools an education of the hand and heart equally with the head. We believe also that the State should supplement the public schools with the kindergarten, for the training of the children under 6 years of age.

Do this, and the tide of crime, which is steadily rising in most countries, will begin to recede, and we shall enter a new and better era of the world's history.

Following General Brinkerhoff, Maj. R. W. McClaughry, superintendent of the State reformatory, Illinois, made additional remarks on the reformatory system in the United States.

THE REFORMATORY SYSTEM BY R. W. M'CLAUGHRY.

Crime in the United States of America presents many great and important problems. Where the individual citizen is so prominent a factor in the Government as he is in our country his relation to that Government and its laws must always be a question of first importance.

In most of the States of the Union imprisonment for felony deprives the prisoner after his release of the right to vote for officers of the Government or members of the lawmaking power, but this deprivation is not counted by the offender as a severe penalty, because he can easily remove from the State in which he lost his citizenship to another and there resume the privilege of voting without danger of being disturbed in it. This condition of things, however, tends to breed a class of citizens who are in sympathy with crime, who encourage criminality, though possibly no longer actively engaging in crime themselves, and who, together with the active criminals, form what is known as the crime class. It is estimated that this class numbers half a million in

the United States, and that not more than one hundred thousand of them are in the different prisons or in any kind of duress.

Foreseeing the evils which must result from so conducting our penal systems as to leave the inmates released from our prisons permanent enemies of society, many of our best citizens have long striven to bring about reform in the management of our prisons as well as in the administration of our criminal laws. For more than one hundred years the Pennsylvania Prison Association, which was called at the date of its organization "An association for the alleviation of the miseries of public prisons," has occupied a prominent position, and has greatly influenced legislation, not only in Pennsylvania, but in many other States of the Union. The efforts of the late Dr. E. C. Wines, which resulted in the organization of the National Prison Association, did very much to awaken inquiry and arouse public sentiment, not only as to the condition of the prisons and jails of the United States, but also as to the effect of imprisonment itself upon those who must return after their release from prison to society, to be either helpful or hurtful members of it.

For more than a quarter of a century the National Prison Association has been engaged in this work, by annual meetings, discussions, and publication of papers and addresses. The more these questions were discussed, the greater has become the dissatisfaction with that feature of the old prison system under which offenders were sentenced to prison for a definite number of years. In many States of the Union the jury of twelve men, which decides upon the guilt or innocence of the person charged with crime, has also the power to fix his sentence if he is found guilty. As a result, local prejudice concerning different kinds of crime is always shown, more or less, in the findings of the jury. For example, in sections where the means of transportation are primitive and limited, the stealing of horses or beasts of burden is punished savagely by the jury; much more so than crimes which are considered more serious in communities where railroads abound. Thus, States which extend through several degrees of latitude, the different parts of which are settled by people of widely divergent social ideas and customs, frequently present very striking examples of inequalities of sentences when they have been fixed by juries. The injustice of such a system is painfully apparent in the penitentiary of the State, to which all these offenders are sent. The power of the executive to pardon or commute is constantly appealed to, in order to equalize, to some extent, the unequal penalties thus inflicted. If this power is exercised to any great extent, it results in such severe criticism of the executive as tends to beget contempt for the law of which he is the representative.

The constant discussion of these questions resulted in the establishment, nearly twenty years ago, in the State of New York of a prison which is called a State Reformatory. It was organized and is governed by *Mr. Z. R. Brockway*, who is justly considered one of the foremost penol*ogists in America*. To this prison are committed persons under the

age of 30 years, who have been convicted of felonies. No limit is fixed to the sentence, save that it may not exceed the maximum term of years fixed by law for the crime of which the party has been convicted. The power is conferred upon the board of managers of the reformatory to release on parole whenever suitable employment is secured for him outside, any prisoner who has given satisfactory evidence to the authorities that he is able and willing to obey the law, earn his living, and become a good citizen. He is required to give an account of himself in writing, each month, to the governor of the reformatory, and this account must be indorsed as correct by his employer. For any violation of the conditions of his parole, he may be arrested upon warrant issued by the reformatory, returned thereto, and required to serve out so much of the remainder of his sentence as the authorities deem best. If he gives satisfactory evidence while serving his parole—which is in no case for less than six months—that he will remain at liberty without violating the law, and that his final release is not incompatible with the welfare of society, it may be granted.

The system of treatment pursued with the criminal while in the reformatory compels the study of him in his social condition and his human relations. Education and labor form important parts of the system. He is given to understand that he can not be sent forth into society until his antagonism to it shall have ceased, and he shall have developed the ability and purpose to become a good citizen. Schools of letters and of trade instruction are important factors in the work of the reformatory. Instruction in ethics, as well as in those fundamental principles of religion which are everywhere recognized as the foundation of social order, is regularly given. In all this work there is no relaxation of necessary discipline. In fact, the discipline in the reformatory is more severe than in the penitentiary. Old habits, tastes, and associations must be changed before the inmate can be pronounced fit to be again a member of society. When the inmate finds that his freedom depends upon his fitness for freedom he begins to study the things which make for that end, and the efforts he puts forth, when properly encouraged and directed, make of him, finally, and in a majority of cases, a very different individual from the one received, under his name and number, into the reformatory.

The result of this experiment in America has been all that its advocates expected, though not all that they hope to accomplish. The carefully ascertained percentage of reformation has been sufficiently large to warrant the friends of the system in urging its adoption in all the States, and such has been the success of the system when fairly tried, that it is believed the time is not far distant when, in the United States, criminals will be sent to reformatories instead of penitentiaries, just as our insane are now committed to our great hospitals—to be cured, if possible; if not, to be kept in such humane seclusion as will prevent them from being a menace to society.

THIRD SECTION.

PREVENTIVE MEANS.

President: M. de Latour, general secretary to the minister of justice, Belgium.

Vice-presidents: Messrs. Privy-Councilor von Bernewitz, Saxony; Marumo, Japan; Professor Nocito, Italy; General Advocate Sloutchewsky, Russia; Attorney-General Smedal, Norway; Professor Typaldo-Bassia, Greece Inspector-General Simon Van der Aa, Holland; Provincial Councilor Van der Veken, Belgium; Minister Vannerus, Luxemburg; Ministerial Councilor Weizsaeker, Wurtemberg.

Secretaries: Messrs. Brunot, inspector-general of the minister of the interior; Albert Rivière, general secretary of La Société Générale des Prisons.

Assistant secretaries: Messrs. von Engelberg, Baden; Didion, Belgium; de Kister and de Chaverdow, Russia; Billecocq, Drucker, Garnier, Laguesse, Morgat.

Having but five questions to consider instead of nine, as in the previous section, the third section was able to devote more time to each subject referred to it. Many of the most distinguished delegates engaged in the discussions.

SUPERVISION OF DISCHARGED CONVICTS.

First Question:

> *What measures shall be taken to prevent prisoners from wasting their accumulations on discharge, and, because without resource, falling again into crime?*

Voluminous reports were presented upon this subject from various countries. The United States, however, was not represented among them. But there is no country in which the question of the care of discharged prisoners needs to be more earnestly considered than in our own. In this respect we are distinctly behind many countries of Europe. The Secretary of the United States delegation having made during this and a previous visit to Europe a special study of methods of aiding discharged convicts, has presented the result of these observations and inquiries in a special paper in the second part of this report.

As remarked on a previous page, it is customary very generally in Europe to assign a portion of the prisoner's earnings to him, part of which constitutes a reserve fund against the day of his discharge. The question of how the sum shall be administered on his release—whether it shall be given to the prisoner directly or placed in the hands of the mayor or some public functionary, held by a patron appointed for the

prisoner, or put in the hands of some society for discharged prisoners—excited much discussion; but as these various methods are considered in the special paper referred to, they are not summarized here.

The following vote taken by the section was reaffirmed by the general assembly:

Resolution:

1. *It is desirable that the prisoner should not have at his discharge the free disposition of his reserve.*

2. *The Congress holds that the prisoner's accumulation should be committed (whenever its importance, the morality of the person liberated, or other circumstances justify a measure of this kind) to a savings bank, to an authority of the place where the discharged prisoner settles, to a society of patronage offering all the necessary guaranties, or to persons approved by the administration, to be remitted to him according to his needs.*

3. *The Congress expresses the opinion, moreover, that among these methods preference should be given to the intervention of societies of patronage.*

PRISON SCHOOLS, LIBRARIES, AND JOURNALS.

Second Question:

How should prison schools and libraries be organized so that they may truly benefit prisoners whether awaiting trial or under sentence? Is it well to put into the hands of prisoners periodicals and other publications especially prepared for them?

Nine reporters, representing Italy, Belgium, England, Portugal, Switzerland, and France, wrote on this subject.

M. Jules Steeg, inspector-general of public instruction of Paris, showed, by facts, figures, and arguments, the value of prison libraries and schools. Statistics show that as the number of the illiterate diminishes in France the diminution is seen also among prisoners. A study of the statistics relating to schools in the Central prison, shows that out of 4,442 prisoners 3,667 had profited by instruction in prison schools. It had been found that 775 did not profit much by it, except perhaps in being able to retain the little they knew on entering prison. In the prisons for women, judged by the examinations, 75 per cent have profited by instruction. Taking the prisons as a whole, if the schools appear to be of little value to 40 out of 100, they at least profit 60 out of 100, and that is a result well worth obtaining. Many who are illiterate are taught to read, write, and calculate. In institutions where prisoners are committed for short sentences, there is less opportunity for schools to do their work; but even here they may be of great value. In establishments distinctly reformatory and correctional, the school must be the center. *It is not* an accessory, not even an auxiliary;

it is an instrument to which everything else should contribute. The correctional establishments for the young in France contain 5,000 boys and about 1,000 girls. Whether by reason of their age or by reason of the state of neglect in which they are found, 35 out of 100 boys come there absolutely illiterate, and 50 out of 100 girls. The schools in these institutions should be as good as those of the public primaries, and they should be submitted to frequent and vigilant inspection. The prison library is the natural complement of the school. It should be developed and improved. The books most sought are books of travel and adventure, novels, and tales. A small number choose scientific works. Works on religion, morals, and political and social economy are passed by.

M. F. Thiry, professor of the University of Liege, admitted the excellent counsel furnished by chaplains and directors, but maintained that it is insufficient. They are regarded as official agents of the institution in which they are confined, and do not always inspire confidence. The best means of conveying moral instruction given by persons not connected with the prison consists in lectures to the prisoners by members of the committee of patronage attached to many European prisons.

M. Louis Rivière proposed the establishment of a special journal for prisoners.

M. Brunot called attention to the great precautions that should be taken in conducting such a journal.

M. Albert Rivière said that no one dreamed of introducing the liberty of the press into prisons. He proposed a journal under the control of the prison administration, the articles to be written by ministers of different religions, by prison officials, members of prisoners' aid societies, professors, and magistrates of places near the prison. Several publications of that kind were noted in Russia, in Switzerland, and America. The Summary of Elmira Reformatory was mentioned as the work of prisoners themselves.

Representatives from Belgium and Italy showed the utility of lectures given by persons not connected with the administration. The correspondence of prisoners showed the value of the impression produced.

Resolutions:

1. *Schools ought to be so organized as to be equally useful to prisoners accused or condemned, who are illiterate, and to those who have already had some instruction. They ought not only to furnish instruction in the branches of knowledge in which prisoners are lacking, but also appropriate moral education. That instruction, without wounding the religious beliefs of any prisoner, ought to be penetrated by a religious spirit—an indispensable element in moral culture.*

2. *Prison libraries having for their principal end the instruction and moral culture of prisoners should be organized in the same spirit. They should contain, in addition to moral and religious works, inter-*

esting books of travel, the best novels, and illustrated publications. The establishment and constitution of these libraries depend upon the prison administration, which may accept the aid of individuals or of associations, especially in procuring for foreign prisoners books written in their own language. For that purpose, there is ground for recommending an exchange of books and other publications between the administrations of different countries.

3. *It would be well to put into the hands of prisoners a special weekly publication, the editorship of which should be controlled by the administration.*

IRRESPONSIBLE DELINQUENTS.

Third Question:

What measure should be taken in the interest of social security against irresponsible delinquents, or against those whose responsibility is diminished at the moment of the crime or the offense by mental alienation?

Five reports were written upon this important question—some by doctors, others by lawyers—combining the legal and medical views. A large number of crimes to-day are committed by those who are not responsible, or whose responsibility is diminished when the act is committed. Society, said Dr. Motet, may not punish criminals who are not guilty, but it is its duty to take precautions to prevent them from doing harm. He proposed the organization of establishments intermediary between the prison and the asylum, where such persons could be put under surveillance.

In a previous section the question what should be done with criminals who become insane during imprisonment was considered. The present question relates to those who are insane when they commit the crime.

Other specialists opposed the establishment of special asylums for such persons, and some discussion took place as to the part magistrates and doctors should have in the responsibility of disposing of such delinquents. But the following resolutions were passed:

Resolutions:

1. *The International Penitentiary Congress is of the opinion that special asylums or quarters ought to be assigned for the confinement, by virtue of some judicial decision, of the insane prosecuted or condemned by a court and acquitted by reason of their mental state.*

2. *There is reason for adopting the principle of the triple intervention* (a) *of judicial authority;* (b) *administrative authority;* (c) *and of the doctors of the asylum in authorizing the discharge of such prisoners.*

VAGRANCY.

Fourth Question:

Would not the indefinite confinement in houses of industry of adult vagrants in a state of chronic pauperism be preferable to condemnations to definite periods?

The relation between this question and that of No. 6 in the first section decided the committee on organization that the two sections should join together and discuss the subject in the grand amphitheater of the Sorbonne. Eleven reporters presented monographs upon this important question showing the method of dealing with vagrancy in different countries. Mention was made of the creation in Switzerland of special shelter stations and lodging places; the agricultural colonies in Germany under Pastor Bodelschwingh; the colonies of Holland; the efforts in France made by M. Jules Simon, Pastor Robin, and M. Lefèvre, and of the enactment of the Belgian law of November 22, 1891, due to the efforts of that great humanitarian, M. Lejeune. This law contains remarkable provisions for the repression of vagrancy and of mendicity in children. After a long discussion, the most important points developed were embodied in the—

Resolutions:

1. *Society has the right to take measures which may even be coercive for social preservation against mendicants and vagrants. With this right goes the corresponding duty of organizing public assistance, private aid, and patronage.*

2. *Mendicants and vagrants may be treated differently according as they are—*

(a) *Indigent or infirm invalids;*

(b) *Accidental mendicants or vagrants;*

(c) *Professional mendicants or vagrants.*

The first ought to be assisted so long as they have not the necessary strength to obtain the means of subsistence.

The second, depending upon public or private assistance, should be collected in refuges or shelter stations, methodically organized, where work is obligatory.

The third ought to be the object of repression severe enough to prevent relapse.

3. *The most effective method against professionals is a sentence to prolonged confinement in special labor colonies. The inmates should be liberated when, by reason of their amendment or by reason of their probable reestablishment in society, their detention does not appear to be longer necessary.*

Work in these colonies ought to be regarded not only as a means of repression, but, above all, as a factor in reformation.

(These resolutions apply also to question 6 of the first section.)

INTEMPERANCE.

Fifth Question:

With reference to the prevention of drunkenness, what are the advantages of asylums for the curative treatment of inebriates; and what are the results obtained in these establishments?

But two reporters wrote on this important question, namely, Professor Dymcha, of St. Petersburg, and Dr. Magnan, chief physician of the asylum of St. Anne, Paris. Each of these gentlemen treated the subject historically, and much information was presented in regard to methods in different countries for the prevention of intemperance. Professor Dymcha showed that the science of penal law is far from having indicated clearly the means of preventing the crimes and ravages which accompany intemperance. There was a time when penal laws attacked individual liberty and punished the immoderate use of spirituous liquors independently of the consequences of drunkenness. But now the law does not generally chastise drunkenness itself; it demands the presence of other circumstances—disorder on the streets, the dangers of public security, etc. The French law of 1887 punishes even the fact of being found in a state of drunkenness in a public place, but most of the codes connect drunkenness in some way with disorder. Professor Dymcha showed by facts and statistics the obligation the State is under to take part in the battle against intemperance. He referred to the results which had been achieved in Norway by a combination of society and the State.

While Professor Dymcha brought out the legal aspects of the question and favored the establishment of asylums to which inebriates might be legally committed, Dr. Magnan treated the subject largely from a medical point of view. He showed the great increase of alcoholism in France in nineteen years, and pointed out the terrible results in idiotic, degenerate, epileptic, and perverse children. He gave a history of the development of asylums for the treatment of intemperance in the United States, going back to the work of Dr. Benjamin Rush, of Philadelphia, in 1804, and showing the development of institutions at Binghamton, N. Y., in Massachusetts, Connecticut, Chicago, and elsewhere. Establishments have been founded in England, Switzerland, Germany, and in other countries. The history of the temperance movements in various lands and of the organization of societies to combat the evil was also detailed. Dr. Magnan believed that these institutions are excellent, but they need to be supported by temperance societies, temperance cafés, and other moral influences, and by legislation restricting, regulating, and supervising the production of alcoholic liquors.

Senator Zakrewski, of Russia, gave information concerning the monopoly of the liquor traffic which Russia has already established in four departments since the 1st of January, 1895, and which will be extended to other portions of the Empire. This step will involve a great falling

off in the receipts of the Government, but the step is taken from moral considerations only.

Madam Corroine Riotrovska wished to prohibit wholly the sale of liquors, as in some States of the United States, notably the State of Maine.

M. Taverni said that in Sicily there are many crimes, but few victims of alcoholism. Dr. Magnan replied that there is less alcoholism in a country where they drank natural wines, but in Paris it was otherwise. M. Tarde said that it was not possible to exaggerate the influence of alcohol upon crime. The result of the discussion was thus formulated.

Resolutions:

The Congress, moved by the gradual increase of alcoholism—the principal cause of which is the consumption of nonrectified spirits or of drinks artificially composed, and whose influence is seen more and more every day in the development of criminality—is of the opinion that to combat this scourge the public authorities should combine their action with that of free association for prophylactic and therapeutic measures.

Among prophylactic measures the Congress recommends, on the one hand, the regulation of taverns, the limitation of their number, the reduction of taxes on hygienic drinks, the rectification of spirits for industrial uses; on the other hand, it recommends temperance unions, associations, and establishments, and the propaganda which they may organize, to influence manners and habits.

From a therapeutic point of view, each country ought to establish inebriate asylums, in which labor shall be well organized; their number to be determined by the statistics of intemperance in each region. Legislative provisions should regulate commitment to these asylums according as the inebriate may ask to be treated, or shall have been the subject of repeated condemnations for drunkenness, or when his habitual drunkenness shall become a peril to himself and to the security of others. Discharge from these establishments should be likewise regulated by law.

FOURTH SECTION.

CHILDREN AND MINORS.

President: Mr. von Jagemann, minister of Baden at Berlin.

Vice-presidents: Messrs. Councilor Armengol y Cornet, Spain; President Canonico, Italy; Dr. Dimitri Drill, Russia; Councilor Fuchs, Baden; Privy Councilor Kapustine, Russia; Joao da Silva-Matos, Portugal; Director Stockmar, Switzerland; Councilor Thelemann, Bavaria; Judge Fekete de Nagyivany, Hungary.

Secretaries: Messrs. Vincens, chief of bureau to the minister of the interior; Passez, solicitor of the council of state and the court of cassation; M. Pichat, auditor of the council of state.

Associate secretaries: Mlle. Poet Lydia, doctor of law, Italy; M. Kazarine, Russia; M. de Westmann, Russia; M. Nassey, France.

As already said, the fourth section was a new department, established the first time at this Congress. It proved to be one of the most popular sections. The largest hall in the College of France was assigned to it. While the first section was largely composed of lawyers and the second of prison officials, the fourth section was more general in its membership, having a good representation of the bar, the clergy, and of prison experts; also directors of educational and correctional institutions for the young, Protestant ministers, Roman Catholic priests, Jewish rabbis, and a large delegation of women. Its deliberations covered eight questions, which are taken up in detail.

THE LEGAL AGE OF MINORITY.

First Question:

> *Is it desirable to extend the limit of penal minority for boys unto the age when they are eligible for military service? By penal minority is understood the period during which the judge pronounces an acquittal for lack of discernment or commits to an establishment for correctional education.*

In the preliminary reports the professors, lawyers, and magistrates were generally in favor of fixing the legal age of minority in its penal sense at 18 years. But the directors of colonies and correctional institutions for the young were alarmed at the idea of being forced to receive boys from 16 to 18 years, who might be a disturbing element. M. Félix Voisin, the general reporter, advocated the age of 18. The reference to military service in the question was dropped, because it was desirable to apply the same limit to girls as to boys. In the discussion that followed it was strongly maintained by able speakers that no boy or girl should be considered as a criminal when educational discipline will suffice for his reformation. It was urged that the difference between

discernment and want of discernment recognized in the courts ought to be removed at an early day. The judge should not be expected to conduct such a difficult and delicate inquiry in which the only guide for his judgment must be the witnesses called to enlighten him upon the character, education, and intelligence of the accused. Witnesses are often embarrassed in choosing between the good inspirations of their hearts and their sense of severity, so that not much light is thrown upon the degree of discernment or responsibility of the boy. Up to a certain age all this question of precocity or discernment should be set aside and the only questions concerning a child should be those of his education, whether in a family, in a special institution, or when placed out under guardianship. Penal minority means, therefore, that period in which only measures of education are taken into account. When we are obliged to pronounce sentences, then we enter into the period of penal majority. But at what age shall it be fixed? Some maintain at the age of 16, some at 18.

In the United States, children are guarded in a number of States by wise laws which separate them from older criminals and commit them to educational rather than penal institutions. In other States, little attention has been paid to classification, and young boys are often committed to prison with older criminals.

Resolution:

It is desirable to fix the limit of penal minority at 18 years, on condition that children sent to houses of correction after the age of 16 shall not mingle with the others.

GUARDIANSHIP BY THE STATE.

Second Question:

In what cases should the right of guardianship by the State be substituted for the forfeiture of paternal authority?

Is it desirable in all circumstances to commit to criminal tribunals the determination of the right of guardianship?

M. Justin De Sanctis, director of the Institute of Paternal Correction of Pisa, Italy, while he felt that paternal rights should not be forfeited except in grave cases, showed, on the other hand, the great need of protecting children from pernicious counsels, bad examples, occupations which deform their bodies, and from the brutality of parents. Abandoned children are forced into thievery. They may become prostitutes or murderers. When the father of the illtreated child is reproached, he falls back upon his paternal right. "I am his father," is the response of a man who wickedly deals his children cruel blows, sets them a bad example, and uses them for dishonest gain. The children who should be put under the guardianship of the State are the abandoned, the maltreated, and those that are badly brought up. M. Sanctis found that

most jurists and social scientists would agree that parents should forfeit paternal authority in the cases mentioned of abandonment and cruelty; but when parents turn to the State and ask its aid in helping them to correct their children, opinions differ. Yet when a parent asks the State to assume guardianship, he practically confesses his inability to control his child. If he is allowed, as sometimes occurs, to interfere with his boy's education at a house of correction, and even to withdraw him, the boy may fall again into bad habits and may lapse into delinquency. The right of tutelage by the State ought to be substituted for that of a parent whenever the parent is found unworthy to exercise it. M. Sanctis did not believe it would be well to let the courts decide upon the right of guardianship. The law ought to fix precisely the conditions, and its provision should not be subject to arbitrary interpretations. In leaving it to judges to decide in each particular case, we can not have a uniform system.

This question was also the subject of an able report by Mr. C. D. Randall, of Coldwater, Mich., a delegate to the Congress from the United States Bureau of Education. Mr. Randall treated the question at first historically and presented in detail the English and American practice, supported by numerous citations, giving also a summary of the Michigan law. Mr. Randall did not wish to exaggerate the rights of children, but he asked that the prevention of crime and of pauperism, through child saving, should have the prominence it deserves. He urged that the law should continue to extend protection to dependent and ill-treated children, to the point of annulling parental rights when necessary.

M. Armengol y Cornet, reporter of the court of Barcelona, Spain, rendered a report in practical agreement with the preceding, and showing the need of protecting stepchildren from cruel parents. Reports were also presented by M. Félix Voisin, of Paris, Dr. Louis Fuld, of Mayence, and M. de Moldenhawer, of Poland, who rendered a full and very able report discussing contemporary laws.

In the discussion a number of speakers took the ground that the civil court should determine the question of the right of guardianship except in cases where the criminal courts have to decide on the unworthiness of parents.

Resolutions:

1. *The withdrawal of the right of guardianship may be substituted for the forfeiture of paternal power in such cases as the courts may determine.*

2. *Civil courts should determine questions relating to tutelage and the right of guardianship, but criminal courts before which parents are convicted of crime may withdraw from them the right of guardianship.*

SCHOOLS AND HOUSES OF CORRECTION.

Third Question:

Should there not be substituted for the single and ordinary type of the house of correction a series of establishments suitable for different classes of minors as defined by penal law?

Should not the school of preservation (l'École de préservation) or house of correction (Maison de premier degré) be reserved simply for mendicants and vagrants?

What is the most effective way of preventing mendicity and vagrancy in minors?

The president of the section asked that this question might be joined with the fourth, which was thus formulated:

Fourth Question:

By what authority should sentence be pronounced upon children guilty of infractions of the law?

Upon what principles shall it be decided whether these infractions involve—

(a) *Penal condemnation and incarceration in a penal institution properly so called?*

(b) *Or commitment to a special house of correction for vicious or undisciplined children?*

(c) *Or sending them to an educational establishment intended for pupils under the guardianship of public authority?*

Should the age of children be the only element considered in making these distinctions and determining decisions, and under what conditions?

(d) *Upon what principles and according to what procedure should children confined in these establishments be liberated temporarily, conditionally, or definitely?*

(e) *Under what conditions may minors be regarded as relapsed offenders (recidivists) and what consequences should such a relapse entail?*

No less than sixteen reporters passed upon the sixth question and ten upon the fourth. It would swell this report too much to give an abstract of all these reports. The difference of opinion presented in the discussion was such that a special committee was appointed to amalgamate different views. The report of this committee, amended and enlarged, led to the following conclusions, which embody the most important suggestions:

Resolution:

1. *Children arraigned before courts of justice may, according to their age and the nature of acts for which they have been arrested and their degree of discernment, be sent to establishments, public or private, either of a benevolent and preservative* or reformatory character.

Children under 12 years should always be sent to institutions of preservation. Sentenced children should be kept in separate quarters.

2. *It is desirable that the name given to these establishments should not be such as to prejudice the future of the child by affixing a stigma.*

3. *The court has the right to decide whether the child shall be placed under guardianship. The choice of the system of education (penal, reformatory, or preservative) may be decided by the authority to which the education of the child is committed.*

4. *The question of relapse was recommitted to the first section of the Congress.*

5. *Provisional liberty should be granted when the child shall have received a sufficient amount of general and technical schooling, and with the consent of the administrative authority, provided also that the child shall be subject to continual surveillance, that he shall be provided with work and with conditions necessary for his material and moral welfare.*

6. *To prevent children from becoming vagrants or mendicants:*

(a) *Unworthy parents must be deprived of the right to rear children, and those who trade in mendicity must be punished.*

(b) *Honest parents who are incapable of giving proper oversight to their children must be helped to fulfill their mission, by strictly enforcing the school laws and by establishing nurseries, crêches, kindergartens, maternal schools, and other similar institutions.*

(c) *Adolescent or abandoned orphans should be offered the means of avoiding vagrancy and mendicity, and received in temporary asylums where work is provided. Only voluntary vagrants or mendicants should be treated as delinquents.*

7. *If it is proved that the vagrancy or mendicancy of the child is due to the fault or the negligence of persons who have authority over him, these persons shall be prosecuted and sentenced to fine, imprisonment, or to privation of their civil rights, or to one of these three penalties, without forfeiture of rights of parentage or privation of guardianship.*

8. *In that case, after the organization of preventive means, parents guilty of neglecting their children may be declared in whole or in part responsible for the expenses of guardianship and the education of minors.*

9. *Proprietors of hotels and lodging houses who give permanent or temporary shelter to minors to expose them to an immoral life shall be condemned to some correctional penalty. After the first infraction the court may order the establishment to be closed, and this should be obligatory in case of relapse.*

PHYSICAL EDUCATION FOR MINORS.

Fifth Question:

Is it necessary to assign a large place to rational physical education in houses of detention for children?

The thirteen reports presented on this question as analyzed by M. Nassoy were unanimous in assigning a large part to rational physical education. While some of the writers outlined a system of gymnastics, and reference was again made to the experiments at the Elmira Reformatory, it was also maintained by some of the reporters, and urged by the reporter-general, that the best form of exercise was to be found in some form of work, above all in agricultural labors. In cultivating the ground, children in agricultural colonies not only become robust, but learn to gain an honest living. From a moral point of view, therefore, the advantages of this form of exercise are great. The fatigue which follows labor is salutary and a protection against temptation.

Mme. Bogelot, of Paris, and the Countess Oppezzi felt that sufficient physical exercise in the open air is not furnished to young prisoners. They believe that some form of outdoor labor in the way of horticulture or farming ought to be more general.

At the conclusion of the discussion, the resolution proposed by M. Nassoy was unanimously adopted:

Resolution:

The preponderant place in rational physical education should be given to manual labor, and particularly to agricultural labor, in the open air for both sexes.

MINIMUM OR MAXIMUM PENALTIES.

Sixth Question:

Would it be well to fix a minimum time sentence in sending minors to houses of correction?

Would it be well to decide that in all cases where minors have been condemned they should be committed until their majority under civil law to a penal house of correction?

Three of the reporters on this question, as directors of colonies and institutions for the young, treated the matter from the practical standpoint, and showed the inutility of short sentences for children who need the prolonged influence of education. M. Félix Voisin, in analyzing these reports, asks how a magistrate is to know when he pronounces a definite sentence on a youthful delinquent what period will be necessary for his reformation.

Professor Thiry also showed the inutility of definite sentences. It was clear to some of the American delegates that the logic effectively expressed in behalf of an indeterminate sentence for minors applied

with great force to adult prisoners, especially when it is considered that the average age of the majority of prisoners is not much above the age of civil majority. In this debate Mr. Michel Heymann, an official delegate from the State of Louisiana, did not wish to hear of the word "sentence" applied to a child. The child, he said, is not a criminal; it may be sick or perverted. It needs to be guarded, trained, educated, and reformed, but all idea of penalty which degrades or fixes a stigma upon its life must be set aside. M. Voisin, in reply to a statement that the courts might not wish to give up the right to fix a minimum sentence, said that commitment to a house of correctional education ought not to be regarded as a penalty. It is a measure for the protection of the child. It is for the educator to decide when the task of education is complete.

M. Lejeune, of Belgium, asked that in the conclusions voted the words "correctional" or "penitentiary" as applied to houses of education should not be used. These words ought not to be pronounced against a child, whose future must always be held in mind.

Resolution:

1. *When the care of the child has been assumed by the Government, or it has been placed under administrative guardianship, this care should extend to the age of majority.*

2. *There is ground for concluding that in all cases where minors have been condemned they should be placed under administrative guardianship until the age of civil majority.*

3. *A decision of the court may end the guardianship when the authorities think that the educational task is finished.*

THE SUPERVISION OF CHILDREN PLACED IN FAMILIES.

Seventh Question:

How and by whom should oversight be maintained under the placing-out system; that is, of abandoned or assisted children and those from penitentiary colonies who are placed individually in families?

The danger of placing children in families without proper supervision was recognized in the various reports. Some of the writers proposed that inspection should be made by the agents of the institutions to which such children may have been committed before they were placed out. This is practically adopted in the case of children who are thus placed from the French penitentiary colony of Mettray. There are always a certain number of applications for such children. It is the duty of the agent to visit them. In distant localities patrons, priests, ministers, or members of some charitable society visit the children, and correspondence is maintained with the patrons as well as with the children. But supervision, it was maintained by Captain Cluze, of Mettray, should be friendly rather than official. The work is best done

by societies of patronage. Messrs. F. Walter and A. Timofeef, of Russia, presented an interesting report, considering first the inspection of children who had previously served in correctional institutions, and then of those placed directly under guardianship in families. In the first case guardians should have some responsibility to the administration of these institutions. In other cases societies of patronage should exercise a surveillance in the way of friendly visiting without the intervention of the police and devoid of an official character. The patrons should be animated by a benevolent spirit.

The State should cooperate with these societies, as in England. Dr. Emile Barthes, of Caen, showed that the question had been discussed very fully for the last thirty or forty years. He believed that such societies of patronage had attained a greater success in Germany, and referred to the society of Elberfeld. Messrs. Louiche-Desfontaine and Godefroy thought that surveillance should be exercised concurrently by the societies of patronage and by public authority. M. Lejeune, of Belgium, formerly minister of justice, spoke from official experience of the great value of the inspection by societies of patronage. The directors of these societies had said to him: "We do not wish to submit to governmental supervision. If we must do that we prefer to give up the work. If you have confidence in us, give us your children; if you do not have confidence in us, why do you intrust the children to us?" He had had that confidence. He had given to them complete supervision of the wards of the Government, and he had never regretted this decision. In Belgium the supervision of children placed out is conducted by these societies with tact and discretion. No such results could ever be obtained by governmental supervision, which perpetually reminds the child of its origin and becomes formal and perfunctory. M. Lejeune spoke then, as always, with elevation and power, and the resolution proposed by him was adopted.

Resolution:

Children who are placed in families under administrative guardianship or who are wards of the Government can only be effectively supervised through societies of patronage.

THE PREVENTION OF PROSTITUTION.

Eighth Question:

What means should be employed to prevent and repress the prostitution of minors?

Is it not desirable that an understanding should be established between different nations for the purpose of preventing the prostitution of young girls placed in foreign countries and too often lured into vice through the intrigues of certain persons or agencies?

M. Minod and De Meuron, of Geneva, in a preliminary report, showed that 60 per cent of the girls leading an abandoned life in Zurich had

fallen before 17 years of age, and 88 per cent before 20 years. Those who are engaged in the trade seek to furnish to these houses girls as young as possible. The State should not recognize prostitution as a trade. It should be interdicted to minors.

The section discussed also the question submitted to it by the first section as to what means should be adopted to prevent the expatriation of young girls for the purpose of prostitution, and the two sections were united in this discussion.

M. Yves Guyot presented a report abounding in facts showing the trade carried on in young girls between different countries. A great many are induced to emigrate by the promise of places. A large trade is carried on in Germany and Austria and Belgium in this direction. London, Constantinople, North and South America, and Australia furnish a market for this traffic. Reference was made to the investigations in London on this subject. Belgium, Holland, Austria, and Russia have concluded treaties or taken measures to prevent this traffic. But the effort has been only partially successful, owing to the lack of cooperation in different countries, the want of uniformity in the laws for punishing these crimes, and the difficulty of establishing the proof of such facts as enter into the commerce in young girls.

M. Guyot proposed an international conference to study measures for the repression of the traffic. The discussion was earnest and animated. Numerous resolutions and amendments were offered, and the session was suspended to permit the authors of various measures to consolidate their propositions. The result was the amalgamation of several resolutions offered by different members and adopted almost unanimously as follows:

Resolutions:

1. *Abduction by fraud or allurement for prostitution, the employment of such means to constrain even one who has reached majority to lead a life of prostitution, ought to be severely repressed, with an increase of the penalty in case of relapse.*

2. *It is recommended that a conference of delegates of different Governments be called to take international measures against the abduction of girls.*

3. *The best means for repressing the prostitution of minors:*

(a) *To raise to 15 years the age in which seduction is considered as criminal.*

(b) *To increase the number of reform schools, asylums, refuges, and other establishments of the same kind, designed for wayward young girls.*

4. *Recognizing the influence of religious education upon public morality, it is necessary to consider the important place which should always be accorded to it.*

5. *Every minor of either sex less than 18 years of age found in an*

habitual state of prostitution shall be conducted, after a preliminary examination, before a court which, according to circumstances, shall commit the minor to his or her parents or to some house of refuge, education, or reformation, or to some honorable family, until the age of civil majority.

6. *The Congress is of the opinion that the question of the regulation of prostitution ought to be a part of the programme of the next Congress.*

INTERNATIONAL PATRONAGE.

Before separating, the fourth section adopted the following resolution in regard to international cooperation in aiding and protecting the young through the societies of patronage in different countries:

Resolution:

The Congress is of the opinion that with as little delay as possible international relations of patronage and oversight for abandoned children and those discharged from correctional institutions should be established between different States, and more particularly upon the borders of adjoining countries. The aim of this international patronage should be not only to come to the aid of the young and of children surviving their parents, but above all to see that they are promptly directed to their native countries, and there committed to societies of patronage, if they exist.

CLOSE OF THE CONGRESS.

In the reports of the different sections the discussions at the general sessions of the Congress and the resolutions there adopted have been included. The most important work was done in the separate sections, and for the most part the action of the general sessions was but a ratification of that of the different sections, though at times the debate was transferred from the small halls to the larger one and continued with great warmth. The resolutions given in the preceding pages sometimes represented a compromise; but sometimes they express very well the whole spirit of the debate, and were made up from various propositions advanced during the discussion.

The closing session of the Congress was held in the amphitheater of the Sorbonne, Tuesday, July 9. In giving the closing address M. Duflos, the president, to whose large ability and untiring devotion so much of the success of the Congress was due, said:

We have reached the end of our labors. In these ten days a large task has been accomplished. Thirty questions were comprised in our programme. All have been studied with the greatest care. They have given rise to wise and profound discussions in the sections and in the general assembly.

The results have exceeded our expectations. Never has a programme more fully charged been submitted to the Congress. We have the right to be proud of the results which prove the vitality and worth of the Congress.

And now we are about to separate after ten days of devoted work, and after holding sessions in which there has been an admirable exchange of ideas, with intervals of fraternal relaxation to strengthen old friendships and form new ones, and to afford the pleasing spectacle of men belonging to twenty-five different nations marching hand in hand, united by the same desire, illumined by the same glowing zeal, defending different opinions with ardor and vivacity, but with one aim and one purpose. It is not without heaviness of heart that I address you on the eve of your departure. We hope you will bear a lasting remembrance of your visit here, that you will part with the assurance that you leave behind you in Paris sincere and devoted friends. Sometimes turn your eyes toward us, sometimes bend your ear toward France, and you will hear the beating of our hearts, and across the distance you will see our arms lifted toward you and we, ourselves, saying to you, "Friends, confide in us; rely upon our unalterable attachment. Soon we hope to unite again with you in the pursuit of generous objects. We shall not forget you. The ties which bind us are those which can neither be broken nor relaxed."

No, ladies and gentlemen, it is not an adieu that we have to say at this time. The Belgian Government, through its eminent and sympathetic representative, M. de Latour, has made known to the International Penitentiary Commission that it will offer hospitality in 1900 to the Sixth International Prison Congress. The International Commission has replied with thanks for this friendly and gracious invitation, which has secured the unanimous acceptance of all the nations represented in the International Commission. I have raised my hand with my colleagues, regretting that as a Frenchman I could not vote twice in favor of the proposition. Brussels is not far from Paris. We may hope, then, that the Congress of Brussels will furnish for our foreign guests an opportunity to come to Paris and assist us in our festal celebrations in the interest of industry, commerce, and art which the Government of France has prepared for the end of the century.

Au revoir, then, ladies and gentlemen. We extend to your countries, your families, and everything which is dear to you, our most sincere and affectionate wishes.

RECEPTIONS AND EXCURSIONS.

No account of the Congress would be complete without reference to the receptions and other courtesies extended to the delegates and the excursions organized, not only to furnish recreation, but to give an opportunity to visit representative French institutions.

The evening before the opening of the Congress, Saturday, June 29, the members of the Congress attended a reception given by M. Félix Faure, President of the French Republic, at the Palais d'Élysée. The members were individually presented to the President. The gardens and salons were thrown open to the guests, and delightful music was furnished by the Guarde Républicaine.

The opening session of the Congress at the Sorbonne, Sunday afternoon, June 30, has already been described. The same evening, at 7 o'clock, a grand banquet was given by the committee of organization to all the foreign members in the great dining hall of the Hotel Continental. Six hundred covers were laid, and care was taken that every foreign guest should be brought into personal relation at the table with representative Frenchmen. The minister of the interior, M. Leygues, presided. Other officers of the French Government and foreign ambassadors sat on his right and left. M. Leygues made a brief address of welcome, which was responded to by M. Galkine-Wraskoy, the head of

the Russian delegation. After the dinner followed a reception lasting till midnight.

Tuesday, July 2, the President of the Republic and Mme. Félix Faure received at dinner the officers of the Congress and the presidents of the different foreign delegations.

On Wednesday, July 3, two excursions were provided. Half of the Congress proceeded by a special train to Melun, where they visited the great penitentiary at that place, at which all the preliminary reports of the Congress, amounting to 2,500 pages, and the daily bulletins of the proceedings were printed. A visit to the palace of Fontainbleau and a drive through the forest followed. A banquet was given in the palace to the two hundred excursionists. M. Duflos, the president of the Congress, in a happy speech spoke of the friendship, the confidence, and the high ideals which animated the members, and concluded by quoting the spirit of Longfellow's verse:

> Let the dead Past bury its dead!
> Act—act in the living Present!—
> Heart within and God o'erhead!

Toasts were offered and addresses made by Messrs. Galkine-Wraskoy, Braunbehrens, Pierantoni, de Latour, Tarassow, de Dychma, and Reboul.

On the same day another delegation of members, among them a large number of ladies, visited the Panthéon, la Conciergerie, les Invalides, and proceeded by steamer to St. Cloud. Dinner was served on the boat, and toasts were offered by Messrs. von Jagemann and Puibaraud. The excursion was terminated by a visit to the national manufactory at Sèvres.

On Thursday, July 4, a grand banquet was given in the Eiffel tower to 200 guests by the Société Générale des Prisons. The president, M. Félix Voisin, extended the welcome of the society whose distinguished contributions to penology are known the world over by all students of criminology. "This gathering," said M. Voisin, "is invaluable for us, for it consecrates old friendships and permits us to form new ones." He spoke of the great change that had taken place in twenty years. In that time the members of the Congress had learned to work together for the progress of penitentiary science, in which their minds and hearts were closely united.

M. Lejeune, of Belgium, in extending thanks to the society spoke of the new spirit of hopefulness which inspires the pursuit of ideal justice. We are seeking to know true justice; we wish to possess it and to practice it. In that research our eyes are turned toward France, which has done so much for the inspiration of human progress. All whose efforts are turned and whose hearts are drawn toward that aspiration of true human justice are filled with a sentiment of profound gratitude for the light which La Société Générale des Prisons has thrown upon its way.

M. Ribot, president of the council to the French Government and

honorary president of the society, offered a toast celebrating the collaboration of all nations in the great task which has united them in this Congress. If France had played an honorable part in the march of progress, as M. Lejeune had said, it is because she has known how to borrow generous ideas from the nations about her. It is the sympathies which have united France to all other foreign nations which have enabled her to hold on some occasions, and not without honor, the standard of progress and of civilization. He would be very blind and narrow in his conceptions who should affirm to-day after all the changes which have renewed the face of the world that a nation is sufficient to itself in the task which is imposed upon it. In the contest in which we have engaged against misery, against vice, against those evils which beset humanity, we can not be isolated. We must sustain each other. We must join our efforts, our thoughts, and, permit me to add, our hearts. We have begun that battle and we will continue it. The years are short, but the lives of nations and the life of humanity are long and we ought to take with us when we leave this earth the consciousness that we have been able to do something to promote the progress of humanity and civilization.

M. Pessina, of Italy, rendered a tribute to the great work of the society, which by its publication and its energetic efforts had instituted a permanent inquiry into the penitentiary institutions of France and foreign countries. He congratulated them upon the results. We are not moved by blind sentimentalism. Penal justice, as we understand it, is the skillful surgeon cauterizing the wounds of society.

M. Leygues, minister of the interior, addressing the members of the Congress, said that in twenty-five years they had accomplished a revolution. They had effaced from the entrance of their prisons the words which Dante placed over the entrance to hell, "All hope abandon ye who enter here." That was true once, but thanks to you it is no longer true to-day. The Government is happy in cooperating with you because your work is not only penitentiary work; in enlarging your field of action, you engaged in a work which is social, political, and philosophical.

M. Trarieux, minister of justice, spoke of the deep interest which the department of justice had in the work of the Congress. Judges and magistrates were largely represented in these gatherings. Alongside of philosophers, scientists, and professors there were advocates and counselors of the highest courts who came to join in the study of reforms in which they have often taken the initiative and in which their advice may always be valuable. He wished that not only a select number, but that the entire magistracy were enrolled under their banner. What becomes of good laws if they are not applied by judges capable of understanding and administering them in the same spirit in which they have been framed? The good judge needs to be versed in penal science. Justice *is the supreme* end. There was no barrier,

he said, between him and his colleague, the minister of the interior, who presided over penitentiary administration. Justice is not implacable chastisement and blind exemplary punishment; true justice is benevolent toward the weak, compassionate to childhood; it is justice combined with sensibility; it seeks to restore the guilty through mercy combined with severity.

Addresses were also made by M. Canonico, of Italy; M. Galkine-Wraskoy, of Russia; and M. F. Duflos, president of the Congress, who also rendered a tribute to the work of the society, and closed by offering a toast to the sentiments which animate all civilized people for the continual progress of science and of the triumph of justice, law, and goodness.

On Saturday, July 6, the members of the Congress were the guests of the general council of the Seine, and visited the departmental prisons and institutions of Nanterre and of Montesson.

Sunday, July 7, the Congress visited the penitentiary colony of Douaires and the special asylum for the criminal insane at Gaillon. The visits to these and other institutions were of the greatest interest to the delegates, who found much to commend in their administration, but most of all the hopeful, progressive, humanitarian spirit which pervaded them.

The same evening a brilliant reception was given by the minister of the interior to the members of the Congress. Members of the diplomatic corps, a large number of senators, deputies, officers of the army, artists, and men of letters were present. The apartments were beautifully decorated, the garden was illuminated, the band of La Garde Républicaine played selections from French composers, and the guests had the pleasure of hearing distinguished actors of the Comédie française.

Monday evening, July 9, a dinner was offered by the foreign delegates to the French committee of organization. It was held in La Maison Bubat, Champs-Élysées. The dinner was given in a tent decorated with the flags of all nations, while an excellent orchestra rendered the national airs of different countries.

M. Galkine-Wraskoy, in offering a toast to the President of the French Republic, said that France is not only a hospitable land for strangers; it is also hospitable to ideas of justice and of charity, those great influences which elevate civilization and contribute to fraternal sympathy among nations.

M. Pols, of Holland, expressed his gratitude for the sympathy they had received and for the generous efforts which had been made to facilitate their labors. He thanked all the officers of the Government and the committee of organization.

M. Canonico, of Italy, called attention to the immense labor which the committee of organization had undertaken and fulfilled. Referring

to M. Duflos, he said the general has been worthy of his army, and the army has been worthy of its general. They had succeeded so well because they had been animated by noble and generous sentiments.

A toast was offered by M. Braunbehrens to La Société générale des prisons, and M. de Latour offered a toast of thanks to the city of Paris, which had extended such magnificent hospitality. Paris offers a splendid aggregation of elegance and of the most beautiful productions of science, art, and of letters. But they had seen behind all this incomparable splendor something more precious—the noble sentiments which inform the soul and heart of France.

M. Leygues, minister of the interior, responded on behalf of the French Government, M. Voisin for La Société des Prisons, and M. Duflos for the committee of organization.

An incident especially interesting to Americans was the tribute paid by Dr. Guillaume, the general secretary, to the late Dr. E. C. Wines. Dr. Guillaume said:

In every prison congress the name of their promoter, Dr. Wines, is pronounced with gratitude and veneration. His Excellency M. Galkine-Wraskoy has just reminded me of the sacred duty of filial gratitude which we owe to the man who has stimulated in every country this admirable movement in behalf of penitentiary reform and of the prevention of crime. Animated by a faith which moves mountains, but calm and methodical, he began by creating the American Prison Association, in which ideas practical rather than theoretical have been discussed that have been for the most part realized. It is sufficient to mention among things realized the indeterminate sentence, the probation system, and the Elmira Reformatory. After having stimulated the reform in the United States, Dr. Wines wished to set in motion a similar movement in Europe and unite the efforts of the State with private initiative in this field of activity. The difficulties were great, for then the governments considered members of benevolent societies as dreamers and metaphysicians, while these on the other hand considered public officials as doctrinaires and bureaucrats. To overcome these difficulties, Dr. Wines, in spite of his great age, undertook to visit every country of Europe and to personally plead his cause before sovereign and influential statesmen. Thanks to his perseverance and to the special tenacity of his race he succeeded in organizing, in 1872, the London Congress, and six years later that of Stockholm.

But, gentlemen, that which has not been sufficiently known and not sufficiently said is that this immense work of Dr. Wines would have been impossible if he had not been always accompanied and seconded by his wife, Mrs. Emma Wines, who constantly served as his active, intelligent, and devoted secretary and translator. Dr. Wines was of the opinion that without the cooperation of woman the work of penitentiary reform would not be crowned with permanent success.

In the London Congress he received the support of distinguished women, among them Miss Mary Carpenter, the wife of the venerated Barwick Baker, and others, who gave animation and brilliancy to the discussions of that first international gathering.

At Stockholm, at Rome, and at St. Petersburg the number of women who distinguished themselves as authors of reports, as orators, or as directors of establishments for unfortunate children or of aid societies constantly increased, and we mention with respect, among others, Mme. d'Oliverona, Doña Arenal, Signora Lydia Poët, Mmes. Dupuy et Brunot, and her royal highness the Grand Duchesse of Oldenburg.

At the Paris Congress the circle is still larger, and it is possible that the question relative to the education *of unfortunate* children which figure on the programme

have procured for the Congress the sympathy of so many distinguished women that we may be permitted to call them our sisters of charity, both lay and religious. Dr. Wines, if he were still among us, would thrill with joy at seeing his dream realized, the active cooperation of woman in the education of abandoned children and youth.

We are proud also, ladies, to-day, at being honored with your presence, and happy at being able to offer our sentiments of gratitude and respect to Mrs. Leygues, Mrs. Duflos, Mrs. Robin, Mrs. Pissard, Mrs. Coroine, Mrs. Rosenberg, and all those ladies who have assisted at the Congress and those who in every country and under whatever title are helping in the rescue of wayward and unfortunate children. We beg them to continue their powerful support and effective cooperation, and believing with us in the perfectibility of the human race, to help to raise the moral and intellectual level of society and to prepare for it a better future.

Dr. Guillaume closed by offering the health of Madam Faure, wife of the President of the Republic.

Gen. R. Brinkerhoff responded to the compliment which had been paid to the influence of the United States in forming the Congress:

Mr. President, and Ladies and Gentlemen: On behalf of the American delegation, I desire to express our appreciation of the high honor accorded our country by Dr. Guillaume in the tribute he has given to the services rendered by our distinguished countryman, Rev. Dr. E. C. Wines. No other man in America has done so much for the reformation of prisons as Dr. Wines. To him we owe the organization of our National Prison Association, which has met annually from 1870 to 1895, and every year in a different State, and its influence for good in prison progress has been more potential than all other causes combined. The National Prison Association of America was organized in 1870, and out of it grew the International Prison Congress, which held its first session in London in 1872, and therefore America is proud to unite with Europe in according high honor to that godly man and Christian philanthropist.

Dr. Guillaume has suggested the desirability of a representative from America upon the International Prison Commission, and I am very glad to say that this suggestion has been anticipated by the American delegates. At a meeting held July 4, it was voted by the American delegation to present the matter to the National Association. I hope America will have a member upon the International Commission for the Congress of 1900.

And now, Mr. President, in conclusion, allow me to say, on behalf of the American delegation, that we are glad to be here, and that we appreciate very highly the many courtesies we have received from the delegates of other countries, and especially that we appreciate the wonderful hospitality of the citizens of Paris and of France in the entertainments and attentions, both official and unofficial, that have been extended to us and to all other members of the Congress. America is the friend of all nations and the enemy of none, but she is especially friendly to the Republic of France.

On Tuesday, July 9, a grand reception was given by the city of Paris, at the Hotel de Ville. In the splendid banquet hall 350 covers were laid, and toasts were offered by the president of the municipal council and M. Galkine-Wraskoy. After the dinner a brilliant literary and musical soiree was held in another grand salon, one of the features of which was a reproduction of early music upon ancient instruments, some old-time dances in the costumes of the period, and songs and *arias, popular* and classical.

Wednesday, July 10, a parting soiree to the members of the Congress was extended by the department of general inspection under the minister of the interior. A reception was held at the Palmarium, and the interchange of friendship and words of farewell were enlivened by a literary and musical programme.

A TRIBUTE TO LAFAYETTE.

In view of the fact that the anniversary of the declaration of American Independence occurred during the session of the Congress, it was suggested by Mr. Henry C. Ranney, of Cleveland, Ohio, that there could be no more appropriate way of observing it than by making a pilgrimage to the tomb of Lafayette and decorating it with flowers. The proposition was received with great unanimity and satisfaction by the American delegates, and a special committee, of which Mr. Ranney was chairman, was appointed to make the necessary arrangements. A general invitation was extended to Americans in Paris to accompany the delegation. On the morning of July 4 the delegation proceeded by carriage to the cemetery of Picpus, in which is the tomb of Lafayette. A beautiful wreath of flowers, fitly inscribed, was placed upon the tomb, and Mr. Charlton T. Lewis, of New York, who had been requested by the delegates to make the address, spoke substantially as follows:

LADIES AND GENTLEMEN, CITIZENS OF THE UNITED STATES SOJOURNING IN THE CAPITAL OF THE GREAT SISTER REPUBLIC: There is not among all the scenes around which cluster the interesting and memorable associations of European history one place more suggestive to us of deep feelings and of far-reaching thoughts than this. Here lie the mortal remains of the leader in that great movement which began by reenforcing the New World in its struggle for freedom, at its most critical hour, by the public opinion and the military power of the foremost monarchy in the Old World, and which continued until the reflex wave of the spirit of emancipation flowed back upon these shores. Nay, his guidance of the movement lasted through nearly two generations of men, until its triumphs in both hemispheres was assured; and we see around us here, in the orderly freedom and progressive institutions of renovated France, the conclusive evidence that the movement itself has not yet culminated, but may be expected to go on for the lasting encouragement of civilization and for the consummation of the best hopes of mankind. Lafayette in early youth was an important and perhaps an essential force in bringing about the independence of the American colonies and the foundation of the great Western Republic, and afterwards, through a long life of devotion to the principle that all sovereignty is vested in the whole people, became the foremost representative of the most progressive social organization, that which combines the highest freedom with the maintenance of civil order, in the Old World. His life earned the title of the "Hero of liberty on two continents." But that life has never been written.

The literature which we call history has been too much influenced by the traditional notions of mediæval culture on the one hand, or by the anarchic passions of a disorganizing social philosophy on the other; and the noble conservatism, the disinterested patriotism, the self-sacrificing love of humanity, the genius for divining the worth of principle and for controlling and simplifying by it all notions and suggestions of immediate policy, have never been fully appreciated by the popular writers who depict to us the stormy days through which France has passed from tyranny to self-government. Lafayette himself deliberately refused throughout his later years to write those memoirs for which his friends and the friends of truth so

often asked him. No life of modern times is so romantic as his; no life in any age was ever so full of wonderful vicissitudes. More than once, and for considerable periods, he was at the summit of power, and practically the dictator of France; more than once he was the idol of the people, and his popularity outshone that of his country's most successful warriors and most influential statesmen. At other times he was proscribed—now by the voice of the mob assuming to be the voice of the nation, and again by the will of the military tyrant who had bent or broken everything else before him save the mind and will of Lafayette. But amid it all the faith of the hero was serene and firm in the ultimate triumph of truth, and, declining to give to the world any apology or story of his own life, he simply declared, "The day will come when liberty shall be established in the Old World as in the New, and then history will set every man and every fact in its right place." Now that his two countries, each of which long recognized in him its foremost citizen, have become, the one the controlling power in the Western Hemisphere and the other the leader of civilization on the continent of Europe, and both have achieved a complete social organization on the basis of orderly freedom, the time has come when the name of Lafayette may be set in its true place. We salute his ashes with infinite gratitude for his services to our own land, and we call upon all the citizens of republican France, who are enjoying the freedom for which he struggled and suffered through a long life, to join us in placing a garland upon his grave.

ACKNOWLEDGMENTS.

The members of the American delegation gratefully acknowledge the courtesies, attention, kindness, and hospitality, official and unofficial. which they received in Paris. So generous and abundant was this hospitality that it would not be possible to acknowledge it all in detail, Special thanks must be rendered, however, to M. Duflos and M. Robin for their unfailing courtesy and their untiring zeal. We wish, likewise, to render thanks to everyone in the administration of the interior department who by clerical or personal labors contributed to the convenience of the delegates. To Dr. Guillaume, the general secretary, who was so intimately associated with the late Dr. Wines in the establishment of the series of International Congresses, and who has held the honorable post of general secretary for so many years, the American delegation are indebted for an official and personal interest which never flagged.

The secretary of the delegation returns thanks to M. Duflos for forwarding documents, and also to the secretaries of the Société Générale des Prisons, whose admirable summary of the proceedings of the Congress has been of great service in the preparation of this report, especially as the official proceedings of the Congress are not yet available.

A beautiful souvenir of the Congress is retained by each delegate in the shape of a commemorative medal, bearing on one side what the classical student might regard as a head of Minerva, but which seems to symbolize the fair features of the still youthful French Republic. The reverse presents a view of Paris, with the Palace of Justice and Notre Dame as conspicuous figures. The medal, engraved by Roty, is a beautiful piece of workmanship, and the name of the delegate receiving it is engraved on it.

RECOMMENDATIONS BY THE AMERICAN DELEGATES.

The official delegates of the United States, in closing this report, respectfully submit a few recommendations derived from their studies and experience at home and abroad:

(1) The general adoption by the different States and municipal police departments of the Bertillon system of identifying criminals as described in the two papers in the second part of this report. In order to secure the largest results a central bureau should be established at Washington under the control of the Department of Justice, and supported by the General Government, to which duplicates of all Bertillon measurements should be sent, and where they should be so classified that the identification of an habitual or professional criminal arrested in any State or Territory of the United States may be rendered certain through the information furnished from said bureau.

(2) The adoption by the different States of the indeterminate sentence and the parole law when combined with a proper reformatory system.

(3) The centralization of prison administration in each State, so as to secure uniformity and improvement in method.

One of the most marked tendencies in modern penology is the treatment of crime as a general rather than as a local disease. The different penal codes in the different States, with all their confusion and contradiction, show local estimates of the nature of crime, and the system of treating it has been founded likewise on local ideas. Thus, in most States there are county prisons. These vary greatly in method and administration. The system is expensive and ineffective. Perhaps no better means for the perpetuation of crime could be devised than that of the county jail in which prisoners of all ages and classes are huddled together promiscuously. A few State institutions, thoroughly equipped and organized, can deal with criminals better than twenty or fifty scattered throughout the State. In England the local method of treating crime and criminals prevailed for many years, until finally the whole prison system was taken into the control of the National Government. The number of prisons was soon reduced from more than a hundred to fifty-nine, and there was a gradual falling off in the prison population. Centralized systems of administration have been adopted in most continental countries. It is evident that under such a system greater uniformity can be secured. In this country we can not have a centralized Federal administration of prisons; but there is no reason why there should not be a central administration in every State.

We also earnestly recommend that in the erection of the proposed new jails in Indian Territory by the Federal Government, they be planned upon the best English or Belgian models, so as to secure the absolute separation of prisoners awaiting trial.

(4) We recommend the adoption of a system of probation as now established *in Massachusetts* and adopted with various modifications

in France, Belgium, England, and Australia. We add, however, that the system of investigation and supervision established in Massachusetts, with probation officers at every criminal court throughout the State, is an important and desirable feature, which ought not to be overlooked in the adoption of this system by other States.

(5) We believe that the system which now generally prevails in Europe of allowing prisoners a portion of their earnings, either in the shape of a gratuity or as a wage for their labor, may be adopted profitably in the United States. Its value has already been demonstrated in Pennsylvania, Minnesota, Wisconsin, and possibly in other States.

(6) No prison system can be effective which is not reformatory in its character. As essential elements in a reformatory system, we would name the necessity of prison labor, prison schools for general, manual, and technical education, combined with moral instruction, the indeterminate sentence, a proper system of grading, and the parole law.

(7) We urge the organization in the United States of societies of patronage for aiding discharged prisoners and refer to an exposition of European methods in a paper, accompanying this report, prepared by Samuel J. Barrows.

(8) We recommend that the Department of Justice be authorized and empowered to obtain and publish the annual statistics of accusations, arrests, trials, and convictions for crime in the different States of the American Union, so that the truth may be known on this subject and the variation in the amount of crime due to varying social conditions may be recorded for comparison in years to come.

(9) We are glad to see that the General Government, by the establishment of a Federal prison at Fort Leavenworth, has recognized its responsibility for the care and treatment of prisoners convicted of violations of Federal laws, and trust that appropriations will soon be made to carry into effect the law now on the statute book authorizing the erection of three Federal prisons.

(10) Finally, your delegates would strongly recommend the appointment of a member to represent the United States on the permanent commission of the International Congress. The reasons for this recommendation are set forth fully in the introduction to this report.

ROELIFF BRINKERHOFF.
ROBERT W. MCCLAUGHRY.
CHARLTON T. LEWIS.
SAMUEL J. BARROWS.

PART II.

SPECIAL REPORTS.

BRITISH AND CONTINENTAL PRISONS.

By Gen. ROELIFF BRINKERHOFF,
President of the American Delegation at the International Prison Congress in Paris.

On my way to Paris to attend the International Prison Congress, and also in returning, I embraced the opportunity to visit charitable and correctional institutions in the British islands and upon the Continent, as far as my time would permit, and it seems proper that I should make some report of observations made and impressions received.

Of course, in a flying visit of an hour or two at an institution no inspection can be made that would warrant any attempt at a detailed report, but to one familiar with similar institutions in America it is not difficult to arrive at satisfactory conclusions as to comparative merits and results.

In Europe penal institutions are not open to the general public as they are in America, and to visit them permits must be secured through departments of justice or other central authority, and I am not sure but in this requirement they are nearer right than we are. However, through the courtesy of our American ministers and consuls applications were made in advance and permits secured, so that there were no detentions anywhere, and officials everywhere gave me prompt and courteous attention, and every opportunity was offered for inspection and information.

I was accompanied by my colleague from Ohio, Mr. Philip W. Ayres, of Cincinnati, and as he could speak both French and German he was of great service upon the Continent as interpreter.

We landed at Queenstown June 7, and spent three weeks in Ireland, Scotland, and east England, before going to Paris, and then on our return, in August, we spent two weeks in south and west England.

BRITISH PENAL INSTITUTIONS.

Prior to 1877 all prisons in the British islands were under the control of the county authorities and some were good and some were bad, and there was no general system of management; but in 1877 by act of Parliament, known as the prisons act, all the prison establishments in the three kingdoms, and their contents, except goods manufactured for

sale and materials provided for that purpose, were transferred to the General Government, in the home secretary.

In rearranging the distribution of prisoners, power was given to the secretary to set apart certain prisons for particular classes of prisoners, and it was provided that if, in pursuance of such classification, a prisoner was moved out of the jurisdiction he belonged to, he should, on discharge, be sent back thither at the public expense. As the closing of a prison, which any authority had provided for its prisoners, rendered necessary the assignment of some other prison for that purpose, the secretary of state was empowered to substitute such other prison accordingly; and further, a general power was given to the secretary of state to permit prisoners to be committed to a prison in an adjoining county.

The prison acts of 1877 abolished the "visiting justices," who had prior to that time controlled the prisons in the several counties and transferred the powers and duties of those bodies to a prison commission in each of the three kingdoms, to be appointed by the home secretary, and these commissions have the appointment and control of the officers and the administration of all prisons in regard to discipline, buildings, contracts, and expenditures of all kinds, subject, however, to rules and regulations prescribed by the home secretary. These rules are the same in all prisons of similar grades in the three kingdoms, and the results are that the only differences in prisons are such as arise from differences in construction and equipment or efficiency of administration.

This rigorous uniformity doubtless gives a higher average efficiency, but it cuts off all initiative on the part of prison officers, and it is a serious question whether this procrustean uniformity is not a hindrance to progress in many directions. Upon the whole, the system works well, but it would seem desirable that prison governors should have some latitude for the expression of their own individuality.

VISITING COMMITTEES.

As a partial check, however, upon the evils of centralization, the act of 1877 created for each county what is known as a visiting committee of justices, appointed by the court of general sessions from the magistrates of the county, whose functions are to hear and examine into reports against prisoners in local prisons and to award punishments for them; to report on any abuses within the prison which may come to their knowledge, and to hear any complaints the prisoners may make.

The number of local prisons taken over by the Government was too large to admit of frequent visitation by the commissioners, and therefore they are assisted by inspectors who pay monthly visits of inspection and hear prisoners' complaints, but do not try them for prison offenses. The latter function is filled by the visiting committee of local justices.

Corporal punishment is allowed to a limited extent in British prisons, but can only be inflicted upon the order of the committee of visiting justices, after a fair hearing of the case on both sides.

Under this system of supervision and inspection, it would seem that abuses to any large extent can not exist without detection.

GRADES OF PRISONS.

For prisoners convicted of felony there are two grades of prisons. Those for high crimes, or under sentence of penal servitude, as it is termed, are called convict prisons, and the others are known as local prisons. All prisoners sentenced for more than two years are for penal servitude.

In England there are six convict prisons, but this number is to be reduced to five. In these prisons the prisoners are worked in association upon the public works, under the Auburn system. Prisoners of this grade, however, are kept in a local prison for nine months after their conviction, under the separate system, in solitary confinement. This period, however, can be shortened by good behavior.

Local prisons, which prior to 1877 were county jails, are now occupied by prisoners not sentenced to penal servitude, which includes prisoners awaiting trial, and misdemeanants. To this there is no objection on account of corrupting associations, as each prisoner, with limited exceptions, is separated from every other prisoner and works in his cell. The cells are much larger than in American jails. Twice a day prisoners are permitted to exercise in the open air in places prepared for that purpose under supervision of an officer.

In London, however, all prisoners awaiting trial are confined in Hollaway Prison under the separate system.

Every prison has a governor, or officer acting as such, a chaplain, a doctor, clerks and storekeepers, a matron and warders of various grades, all of whom come in under civil service rules, and no changes are made except for misconduct or inefficiency. In the larger prisons there are, in addition to the employees named above, a Roman Catholic priest, a schoolmaster, a druggist, a hospital nurse, and an artisan warder to look after the buildings.

Under this centralized system of management, all prisons of the same grade are uniform in their administration, and when you have seen one you have practically seen all.

In connection with each prison there is a discharged prisoners' aid association, which is of great value in securing work for prisoners and giving them a new start in life. These societies are voluntary and are not controlled by the Government, but they work in harmonious cooperation with prison officials, and their funds are supplemental by the Government grants. There are probably 100 of these societies in the British islands. The number reported for England is 67.

JUVENILE REFORMATORIES.

Juvenile reformatories are not under the control of the British commissions, but are mainly private institutions under Government subsidy and inspection. They are known as certified reformatories and certified industrial schools, and there are about 200 of them in the British Islands.

These institutions, so far as I saw them, did not, on an average, compare favorably with similar institutions in America. British prisons, however, as a whole, are in advance of ours, although there are individual prisons in America that are equal to any in the world, but they are rare exceptions.

IRISH PRISONS.

The first prison we visited in Ireland was a local prison at Cork, known as the Cork Male Prison, and we were afforded every facility for inspection by the governor, who accompanied us. We found the prison admirably managed in all of its departments and a model of cleanliness. There were 188 prisoners, some of whom were awaiting trial, and a few were military prisoners. The average number for the year is about 200. The cells were 8 by 15 feet in size.

The next prison visited was Mount Joy, in Dublin, June 8. This is both a convict and local prison, where 325 prisoners were under sentence for penal servitude and 232 for short sentences or awaiting trial. We were accompanied by one of the prison commissioners for Ireland and by the governor of the prison. The cells were 7 by 13, and 9 feet high. We also visited the convict prison for women near by, with 217 inmates. We spent three or four hours in going through them. The administration of these prisons, including the Cork local prison, is far superior to any we have in Ohio, and there are but few in America that equal them, and I have no doubt this superiority of management extends to all Irish prisons, for they are all under the control of the prison commission and the same rules and regulations are applicable to all of them. At Mount Joy Prison the report of the governor for the year ending March 31, 1895, indicates the employment of convicts as "tailoring, shoemaking, smithing, etc.," for the prison service generally; baking bread for all the Dublin prisons; cutting firewood, making mats, matting, etc., chiefly for other public departments; making wire network, cleaning, gardening, etc., for the service of the prison; erecting new buildings and keeping existing buildings, fences, etc., in proper repair.

The governor reports the convicts in general as well-behaved and amenable, with but few punishments, none of which were corporal. One of the commendable features of Mount Joy are the houses for married warders outside of the prison wall.

The prison commissioners, three in number, impressed me as very

superior men, and prison officers and prison employees are especially trained to their work, and their terms of office are during good behavior, and upon retirement receive a pension.

JUVENILE REFORMATORIES.

At Belfast, June 10, we visited in the morning the Malone Protestant Institution for boys, which seems rather an asylum for homeless boys than a reformatory. There were 76 boys who were sent there by magistrates. There are 36 acres of ground and the boys seemed fairly well cared for, but the institution did not compare favorably with similar institutions in America. In the afternoon we visited the training ship *Grampian*, Commander A. J. O'Rourke, a retired naval officer. This is one of quite a number of training ships in the British Islands and the first of its kind I had ever seen, and I was greatly interested and pleased. The ship was an old, discarded three-decker man-of-war, but in good repair and condition for occupancy for the training of boys to be sailors. The average number of boys was 240 and the per capita cost of maintenance per annum about $80, a part of which is paid by the Government and part by the municipality. In addition to the ordinary requirements of a seaman, the boys were taught tailoring, shoemaking, and carpentering.

The regular school curriculum seemed very thorough, under competent teachers, and the whole administration of the ship seemed efficient in all departments. Commander O'Rourke and his wife reside upon the ship, and the daily life of the ship is that of one large family. In the matter of preventive and reformatory work, I saw nothing abroad more worthy of imitation in America than the training ship for boys in the British Islands.

BELFAST UNION WORKHOUSE.

A workhouse in the British Islands is not a place for the punishment of misdemeanants as in America, but is a place for the care of the dependent poor.

The Belfast workhouse is a large institution with a population ranging from 3,000 to 4,000, according to the season. There are four departments, numbering the day we were there, lunatics, 500; children, 220; sick in hospital, 1,467; aged and infirm, 900. The amount of ground is only 32 acres, which is not sufficient, and the four departments ought to be separate institutions, but still the administration seemed very efficient, and the inmates are probably as well cared for as they can be under the circumstances.

One feature was especially praiseworthy, and that was that every inmate, not physically incapacitated, should be engaged every day in some productive employment.

The whole system of caring for the poor in the British Islands, and especially in the *manner of administering* outdoor relief by contribu-

tions in money, did not impress me favorably. We have the same general system in America, with some improvements, but America and Great Britain are both far behind most continental nations in dealing with the poor. At Glasgow, in Scotland, we visited a similar institution, known as the Barnhill Poorhouse, but its average population was only 1,060, and therefore was less crowded, and its administration seemed very efficient. In the employment of inmates it was especially noteworthy, and everyone not physically incapacitated was utilized in some way. The amount of land belonging to the institution is 30 acres, which is about the same as at Belfast.

The inmates in both of these institutions are employed mainly in the usual routine of household requirements and in making bunches of kindlings for sale to outside customers.

SCOTCH PRISONS.

Scotch prisons, like those in Ireland and England, are under the uniform regulations prescribed by the home secretary in London, and, judging from what we saw, are practically the same in their results.

In Glasgow we visited a prison with 166 cells for male prisoners awaiting trial, and admirably arranged and administered so as to insure absolute separation; also Her Majesty's prison for females, with 240 inmates, under the separate system, and managed entirely by women.

In the male prison the size of cells is 7 by 10 feet, and in the female prison 8 by 10 feet. Both are local prisons. At Perth we found a prison with 600 cells and only 200 prisoners. It is a convict prison, but most of this class are now taken to Peterhead, which is the main convict prison for Scotland. Vacant cells, however, is a notable feature in most prisons in the British Islands, and verified the statistics which indicate a steady decrease of crime in recent years.

In Edinburg we visited Her Majesty's prison known as the Galton Jail, with 254 male prisoners and 80 females. All work in cells under the separate system. The industries are mat making, repairing sacks, and oakum and rope picking. Architecturally and constructively this is the best prison we saw. The cells are 8 by 13 feet in size.

ENGLISH PRISONS.

In England there are 57 local prisons and 6 convict prisons. All of the latter are south of London, and of these we visited but four, one north, one central, and two south.

At New Castle on Tyne we found an old structure with something over 100 prisoners (one-third of whom were females), and apparently well administered. The industries for males are stone breaking, ship-*fender* making, gun-sponge making, oakum picking, and prison repairs; *for females*, washing, knitting, and repairing.

PENTONVILLE PRISON.

Pentonville Prison in London was opened in 1842, and in construction was modeled after the Eastern Pennsylvania Penitentiary, and all British prisons since built are more or less imitations of Pentonville. Here we found about 1,000 prisoners. Here, for the first time, we found a treadwheel in operation, furnishing power for grinding flour for prison use. On it 280 men can be employed if necessary. The rule is fifteen minutes on and five off for five hours a day. It is a barbarous form of labor and is being supplemented by regular industries in most British prisons. Other industries at Pentonville are: mail-bag and coal-sack making for the Government, baking bread for the prison, and at Halloway (where all prisoners in London awaiting trial are held), oakum picking, shoemaking, tailoring, blacksmithing and joiner's work, and sack and brush making. The cells at Pentonville are 8 by 15 feet, with 680 cubic feet of air; hospital cells, 1,000 cubic feet.

PARKHURST.

Parkhurst prison on the Isle of Wight is the one to which prisoners under sentence to penal servitude are sent, who, through any physical weakness or infirmity, are not considered strong enough for labor upon the public works.

The average number of prisoners is about 600, and are all high-grade criminals sentenced for more than three years. Here, as in all of the six prisons of this class, the prisoners work in association under the Auburn system of associated labor by day and cellular separation at night, and taking it as a whole I do not know of any prison of that system in the world which is more efficiently administered.

All prisoners convicted of their first offense are known as the "star class" and wear a star, and are kept entirely separate from the others who are recidivists and wear a chevron on their clothing indicating the number of previous convictions. These two classes have separate wards and a separate hospital.

The prisoners are employed in a great variety of industries. Some work upon the farm, some at the various trades, as masons, sawyers, carpenters, smiths, painters, etc., and a still larger number in manufacturing industries, as tailors, knitters, shoemakers, harness makers, mail-bag makers, fender makers, pickers, net making, etc. The prison report of the previous year shows as work done for the Admiralty 7,500 seamed bags, 4,132 fenders, 1,254 sailors' caps for Greenwich school, and 816 nets. Here also is a fully equipped printing establishment operated by 120 prisoners, in which printing is done for all the prisons of England.

Prison punishments are mainly deprivation of privileges and solitary cell with bread and water diet. Formerly a dark cell was used, but this has been abandoned for the reason, as Colonel Partridge, the governor,

affirmed, that a lighter cell was equally efficient and more humane. Corporal punishments are only allowed in cases of assaults upon officers, and then only upon the order of an inspector of the prison commission of London. Opportunity is afforded every day to each prisoner to meet the governor if he so desires for complaint or consultation.

JUVENILE REFORMATORIES.

Among the philanthropists who succeeded Howard in the work of prison reform, one of the most active and useful was Mary Carpenter, of Bristol. In the reformation of delinquent and neglected children she was especially efficient, and besides advocating their cause in her writings she founded several reformatories, one of which, the Red Lodge Reformatory, for girls, at Bristol, she both endowed and superintended. Red Lodge was established in 1854, and is still in active operation as a licensed reformatory. Here we found 48 girls committed by magistrates, and the Government allows for their support from 5 to 7 shillings a week. These girls are sent for definite terms, but not less than three years. After three years they can be placed out, with three years' supervision, and may be returned if they go wrong. They are visited every month by the matron or her assistant. Formerly an agent was employed, but it was found that visitations from the Lodge were more efficient. At the Lodge the girls go to school, and are taught all kinds of household work. They also do laundry work for outside customers, and make all the clothing for the boys of the industrial school. During the three years the girls are under supervision after being placed out; one-half of their earnings is kept and deposited to their credit in the savings bank, and is paid to them after supervision ceases. The institution is supervised four times a year by a Government inspector.

INDUSTRIAL SCHOOL FOR BOYS.

The industrial school for boys at Bristol was established by Mary Carpenter in 1856, and is known as the Park Row Male School. Here we found 74 boys who are committed by magistrates as vagrants, truants, or incorrigibles. For their keeping 7 shillings a week is paid by the Government until they are 10 years old, when the amount is reduced.

The boys do housework, gardening, shoemaking, and tailoring out of school hours. They may be kept until 16 years old, but after eighteen months a boy may be placed out on parole, with supervision for three years. The general methods of management and supervision are the same as in the girls' school, and the results seem very satisfactory, as 90 per cent of the boys discharged are reported as doing well. This institution has an agent in Canada who gets places for boys, and the *institution* pays their fare.

KINGSWOOD REFORMATORY SCHOOL.

We also visited another institution, 4 miles from Bristol, known as the Kingswood Reformatory, located where John Wesley lived and preached, and where he had a theological seminary and training school for preachers. The little chapel where Wesley preached is now used by the reformatory people for morning and evening prayers. The quaint old pulpit remains as Wesley left it. Here we found 107 boys, committed by magistrates for minor offenses, between the ages of 10 and 16, who may be held until 19. They are taught industrial employments and go to school three hours a day. The equipment of the institution was not what it ought to be, but improvements were in progress, and the administration seemed intelligent and efficient.

HARDWICKE REFORMATORY.

The Hardwicke Reformatory, 4 miles east of the city of Gloucester, is especially interesting as being the first reformatory for boys in England, and was established by T. Barwick Lloyd Baker, esq., on his estate at Hardwicke Court in 1851, and was supported at his own expense. He was assisted by a friend who acted as a voluntary superintendent, and they started with 3 young thieves from London. Their success was phenomenal, so that by 1855 there was scarcely a regular habitual boy thief in the courts of Gloucestershire, and from the inspiration of this success the reformatory system went all over the British islands. Mary Carpenter followed with her reformatory for girls, first in Gloucester and then in Bristol. Hardwicke has 40 inmates and has a capacity for double that number. It has 60 acres of ground well cultivated. There are flower gardens and greenhouses, and the boys are instructed in horticulture and general farming. Tailoring and carpentering are also taught. Thomas Gee, the superintendent, has been in charge for forty years, and during that time has had charge of over 1,000 boys, 94 per cent of whom are reported as reformed. It is still doing good work, although, on account of location and other reasons, it is likely to be abandoned. However, it has had a famous history and has done a noble work.

GLOUCESTER JAIL.

We visited the Gloucester Jail, which like other local jails is conducted wholly on the separate system. One part of it was built in 1791, in accordance with the suggestions of John Howard, and is said to have been the model of the Cherry Hill Penitentiary at Philadelphia, which gave name to the separate system all over the world as the Pennsylvania system. This is not improbable, as William Penn and many other Quaker settlers in Pennsylvania were from southwestern England. The separate system, however, really originated in Ghent, Belgium, where Howard found it.

ASHFORD REFORMATORY.

At Ashford, in the county of Kent, we visited a reformatory for boys, located on 80 acres of land, which resembled in its curriculum our ordinary juvenile reformatories in America, although its equipment was much plainer. The buildings are as inexpensive as any ordinary farmhouse, and furniture and chairs are bare boards, and in the dormitories there is no heat in the coldest weather.

These features predominate in all European reformatories, and the reasons given are, that the boys when placed out will be in homes where accommodations will be no better, and to accustom them to luxuries in the reformatories would make them dissatisfied with the homes to which they go outside.

At Ashford they go to school five and one-half hours a day. The trades taught are carpentering, tailoring, blacksmithing, and farming. They also have military drill and athletics. It is a question whether there is not too much work and too little play. Upon graduation they go for the most part into the army as soldiers.

KING'S NORTON UNION.

King's Norton Union Cottage Homes, of Birmingham, was established in 1887 for the purpose of separating children in the workhouse from adult paupers and the influences attaching thereto, and is a preventive rather than a reformatory institution.

The plan adopted was the family system, which has grown from two cottages in 1887 to eight in 1895; and others will be added as needed. The cottages are models in architecture and arrangement, and are superior to any others I saw in Europe. Each cottage accommodates a family of twenty children in charge of a foster father and mother. The children are not grouped according to size or sex, but are arranged so as to make a large family, similar to a large family outside. Some of the children are large and some are small, some are boys and some are girls. Each household is conducted like any outside household—entirely independent—and cares for itself in all family arrangements. The older children look after the younger, and all do their share of the household work, under the direction of the foster father and mother. The schools are conducted the same as in any outside village, and each household sends its quota. The hospital, however, is a separate building, where the children are cared for in case of sickness. There are workshops for industrial training, in which trades are taught in shoemaking, tailoring, carpentering, engineering, fitting, gardening, and bricklaying. There is a swimming pool, where all the children are taught to swim. They are also thoroughly drilled in athletics. I was told there are now several institutions in England conducted on this plan, and its special features are worthy of imitation in America. The average number of children in the homes during the year was 154.

TRAINING SHIP AKBAR.

At Liverpool we visited the reformatory training ship *Akbar*, which, like the *Grampion* at Belfast, is an old-fashioned three-masted ship of war, with a retired navy officer, Captain Hicks, for its chief officer. There were 187 boys, from 14 to 16 years of age, committed by magistrates. They may be held till 19. They are in charge of the superintendent, 1 officer, 2 teachers, a chaplain, 7 trainers in the duties of a sailor, and a cook.

There are six grades in the schools, the same as in the public schools. The boys are taught all matters pertaining to the life of a sailor, of which tailoring and carpentering are a part. The reformatory association have land on shore for football and other games, and daily a section of the boys goes ashore. There is also a brass band made up from the boys. In the hold of the ship is a gymnasium, and on the upper deck a reading room and piano. The chaplain gives regular religious instruction and holds services on Sunday. Nothing I saw in the British Islands impressed me more favorably as worthy of imitation in America than the training ships.

RECAPITULATION.

Of course it is not possible for a transient American to comprehend the British system for dealing with the criminal classes in all its details, and therefore some of my inferences and conclusions are doubtless incorrect; but still, its general outlines can be stated with reasonable accuracy, and therefore I recapitulate its leading features:

(1) Centralization of administration, which is centered in the home secretary in London, and conducted through a prison commission in each of the three kingdoms.

(2) The classification of all prisons into two grades:

(*a*) Local prisons in which are confined all prisoners convicted of felonies or misdemeanors and sentenced for less than two years. This does away with jails and workhouses as we know them in America, but to this there is no large objection so long as each prisoner is kept entirely separate from every other prisoner. A perfect example of an English local prison can be seen in America at Media, Pa., and it is the best administered jail I have seen in America. I am told that there is another at Chester, and possibly there are two or three others in that State.

By placing local prisons under one administration, and thus permitting the concentration of prisoners, many local prisons have been abandoned and only the best have been retained. The result is better accommodations and more intelligent treatment in administration.

(*b*) Convict prisons, to which all prisoners convicted of felony and sentenced for more than two years are confined. Of these prisons there are six (or seven, if we include the lunatic asylum for insane criminals at Broadmoor). *They are Dartmoor*, Portland, Borstal, Dover, Woking,

and Aylesbury. In these prisons all prisoners are worked in association under the Auburn system, with cellular separation at night.

(3) Classification of prisoners sentenced to penal servitude. Every convict may, during his sentence, pass through four classes, called the probation, the third, the second, and the first class, and certain selected prisoners are also placed, during the last year of their sentences, in a special class. The probation period must last for one year; nine months of it are passed in a separate cell, usually in a local prison, and the other three months on public works. Promotion or degradation in these several classes is regulated by a marking system, and by good conduct a sentence can be shortened one-fourth, and a conditional release can be secured upon a ticket of leave.

(4) Supervision by inspectors and visiting committees. Every prison is inspected monthly by a visiting committee of justices appointed by the court of quarter sessions, and also by an inspector appointed by the prison commission.

(5) Punishments more severe than a deprivation of privileges can only be inflicted in local prisons by order of the committee of visiting justices, and in convict prisons by a prison inspector.

(6) All prison officers are appointed through civil-service examinations, and there are no removals except for causes not political.

(7) The methods of employment in British prisons are threefold.

(*a*) In convict prisons labor upon the public works, and in the manufacture of anything that may be required for use in the army or navy or other Government departments. At Dover an immense granite pier half a mile long has been built by prison labor. At Portland a breakwater 2 miles long and running into the water 50 or 60 feet is being built; at Chatham dockyards, covering 540 acres, and also immense sea walls. For the army and navy boots, shoes, clothing, and many other things are made, and for the postal department mail bags, etc., and in this way all convict prisoners are kept busy.

(*b*) In local prisons the employments are less satisfactory, as prisoners for the most part work in their cells, and their labor is not remunerative; but as a whole some occupation is furnished.

(*c*) In some prisons the treadmill, the shot drill, the crank, the capstan, and stone breaking are still in use, but they are punitive rather than remunerative or instructive.

(8) Supervision of discharged prisoners, by prisoners' aid associations, and there is at least one such association for each prison. These associations are voluntary, but when approved by the inspector their funds are supplemented by the Government, and their purpose is to lend a helping hand to such prisoners as need help and desire to lead an honest life.

(9) As a deterrent upon recidivists or habitual criminals the courts are allowed, upon a second or later conviction, to pass sentence not *only* for a definite period, but also for seven years' police supervision

after discharge, with a liability for misconduct to be returned to prison for the remainder of the seven years.

(10) Juvenile delinquents are treated under a dual system.

(*a*) In a reformatory, which is a place of punishment for a convicted offender, as well as a place of training, and reception into a reformatory must be preceded by a period in a local prison of not less than ten days.

(*b*) In an industrial school, which is purely a preventive and training institution for vagrants and neglected children, from which the conviction for certain crimes will exclude the child.

Reformatory and industrial schools are not provided by the State, nor is there any obligation on any local authority to provide them or contribute to them, or on any court of justice to send children to them, or on managers of such schools to receive the children whom the magistrates commit, but such aid is permissive and permitted to all satisfactory institutions.

A reformatory or industrial school may be established in two ways: (1) By private individuals, either as a proprietary institution or as a charitable institution. (2) In England, by the magistrates at quarter session in counties and boroughs, and in Scotland by a county board. A school board may also establish an industrial school, and the county or borough authorities may aid. The total number of these institutions is now about two hundred, one-third of which are reformatories and two-thirds industrial schools.

This, in brief, is the framework of the British penal system. Of course there are other features peculiar to it, but they are mainly matters of detail.

RESULTS.

The results of the British system upon the whole has been more satisfactory than that of any other country, if we are to judge by its efficiency in reducing crime.

Judging by the criminal statistics for the twenty years during which the system has been in operation, the reduction is from a daily average of 20,361 in local prisons in 1876 to 13,383 in 1893. This, however, is more apparent than real, and can be largely accounted for in various ways; but still the most conservative authorities seem to agree that there has been a reduction in crime of about 25 per cent, without counting the increase of population, and this is very satisfactory, and especially in view of the fact that in all other countries there has been a steady increase of crime and no reduction.

To an American the British system seems more repressive than reformative, and my own opinion is that if our American system could be administered with equal efficiency we could obtain equal, if not better, results. Certainly our juvenile reformatories, as a whole, are superior to those in the British Islands, and our reformatories for young felons

on the Elmira system show better results than any equal number of British prisons.

What we want in America, and that we must have if we are to make any large progress in prison management, is a more thorough business management, which can only be obtained by officials especially trained for their work, in a service as permanent as that of the Army or Navy, and as free from political interference.

OUR SPECIAL WEAKNESS.

Compared with the English system, our greatest deficiency is in our county jails, and no efficiency in administration can remedy it to any large extent so long as we keep our prisoners awaiting trial in association in a common hall, with all the corrupting influences that such association permits.

Our county jails, with old and young, innocent and guilty, old offenders with new beginners, forced into association for days and weeks and often months, are compulsory schools of crime, and so long as they remain there can be no large reduction in the rising tide of crime. Our jail system, it is true, came from England, but it is the system of a hundred years ago, which John Howard revolutionized. In England every prisoner, from the time he enters the prison van at the police station until his conviction and transfer to a convict prison, is entirely separated from every other prisoner, and sees no one but the prison officials and his legal adviser.

Our first and paramount duty is to revolutionize our county jails. We might as well attempt to drain a pestilential pool with an inlet larger than the outlet as to expect a reduction of crime under existing conditions.

PROPOSED IMPROVEMENTS.

During the past year there has been a very protracted and thorough investigation of the British prison system by a Parliamentary committee of eight members, of which Herbert Gladstone was chairman, and their report recommends for twenty-five changes which they deem desirable. A few of the most important are as follows:

(1) That unproductive labor should be abolished wherever possible, which means treadmills, shot drills, oakum picking, and the like.

(2) Association for productive and technical instruction to be extended gradually and with due caution throughout the prisons. This is in accord with our American ideas of prison labor.

(3) Every effort should be made to secure additional orders for work from Government departments. In American prisons but little of this kind of work is done, and there is no apparent reasons why all our prisons, State and national, should not be utilized in that way. It is a form of labor to which labor unions in Great Britain do not object, *for the reason* that it does not cause competition in outside markets.

(4) Habitual criminals to be kept as a class apart from the other prisoners. It should be considered whether a new form of sentence might not with advantage be placed at the disposal of the judges, by which these prisoners should be segregated under special conditions for long periods of detention. This has already been authorized in the State of Ohio and several other American States, although not sufficiently enforced.

(5) That two or more prisons should be selected as training schools for all ranks of the prison staff, and be placed under the charge of the most experienced officers in the service, and that probationers should not be returned as belonging to the prison staff. This is in accordance with the practice in France, where a regular school is established at La Santé Prison, in Paris, for the instruction of prison officers from the various prisons of the Republic, and such schools are greatly to be desired in America.

(6) That the Government grant to prisoners' aid societies should be increased and extended to associations conducted on approved methods for the treating of discharged prisoners. The success of the British system in reducing crime is very largely due to these associations, and one of our greatest needs in America is an efficient prisoners' aid association for at least every convict prison, and there ought to be one in every large city for local prisons.

(7) That annual conferences should be held of representatives from the higher ranks of prison officials, managers of reformatories, visiting committees, and prisoners' aid associations, for the purpose of exchanging experiences and ideas, and of establishing closer relations between all officials and public bodies responsible for the management of prisons and the treatment of prisoners.

This is fully in accord with the practice in America where for twenty-five years the National Prison Congress has held annual sessions for the purposes named above.

It ought to be the duty of the managers of every penal and reformatory institution to be represented by one or more delegates, and their expenses should be paid from the funds of the institution.

ACKNOWLEDGMENTS.

For British courtesies I desire to acknowledge very gratefully the prompt and helpful attentions given us by prison governors, who, everywhere in the British islands, accompanied us in person in prison inspections and answered patiently all inquiries we cared to make.

Our thanks are also due to prison commissioners, and especially to their chairman, Mr. J. S. Gibbons, in Dublin; Mr. A. Beatson Bell, in Edinburgh, and Mr. E. Ruggles Brise in London, all of whom we again had the pleasure of meeting in Paris. Also, to Mr. Roosevelt, our American secretary of legation in London, and our American consuls

wherever we went, for courtesies received. In fact, all over Europe our American consuls were equally kind and helpful, and prison officials everywhere gave us every attention that could be desired.

UPON THE CONTINENT.

Upon the Continent we visited a number of prisons and reformatories, but owing to my inability to ask questions, except through an interpreter, or to read the prison literature of the countries visited, I was at a great disadvantage in seeking to comprehend their systems satisfactorily. Therefore my report is restricted mainly to what I saw with my own eyes in the prisons visited.

PRISONS OF FRANCE.

In France I visited only four prisons and a reformatory, and those were in Paris and vicinity, and I presume were not among the best.

MELUN.

The first prison we visited was on the 3d of July, at Melun, 20 miles from the Lyons station, in company with other delegates, on a special train supplied by the Government. Here we found about 500 prisoners who are under the Auburn system of associated labor by day and cellular separation at night. The cells are 6 by 8 feet, and seemed clean and well ventilated, but there is no heat supplied for warming them. One hundred and seventy-five prisoners are employed upon Government printing, and the others upon various industries, and the prison seemed well administered.

NARTERRE.

On July 6 there was an excursion to St. Germain, and on our way, 13 miles out, we stopped to visit Narterre, which is a large prison for misdemeanants, with 4,500 inmates, employed upon various industries with associated labor. The prison seemed fairly well administered, but with such a large number of prisoners in association no satisfactory results in the way of reformation could be expected.

LE ROQUETTE.

La Grand Roquette is a depot for sentenced prisoners awaiting removal to a central prison or penal colony, or to execution for a capital crime. Here, also, we found 360 misdemeanants, sentenced for less than one year, employed in association in making rat and bird traps and paper bags and files. In the way of reformatory influences, either educational, moral, or religious, there were none apparent. There is a chapel, but the governor informed me that ordinarily not more than *half a dozen* attended.

At this prison is the place of execution for Paris prisoners condemned to death. The executioner for all France is M. Deibler, who takes his machine with him wherever needed. We were shown the cells where prisoners are held for execution. In each cell are three chairs—one for the prisoner and two for the guards. The executions are public in an open space fronting upon a street, and take place at daylight in the morning. In a courtyard we were shown the place where Archbishop Durboy and five other hostages were shot to death by the Communists in 1870.

THE CONCIERGERIE.

The Conciergerie is a prison where prisoners awaiting trial are held. It is centuries old, and is a bad place, with scarcely any redeeming qualities. Here Marie Antoinette was imprisoned and went to the guillotine, and here tragedies without number have been enacted, and we were glad to get out of it.

MONTESSAN.

On our excursion to St. Germain, we returned by steamer on the river Seine and stopped over to inspect the Montessan Reformatory buildings, which are nearly ready for occupancy, and will accommodate 400 boys. The institution will be conducted upon the family system, and the cottages and other structures were all new and seemed very well planned and arranged. It was noticeable, however, that there was no church or chapel, and it was claimed that it was not needed.

BERTILLON SYSTEM.

The Bertillon system for the identification of criminals, which is now in use in most European countries, had its origin and most efficient administration in Paris, and we were glad to avail ourselves of an invitation from Mr. Bertillon to visit the bureau of the police department, where measurements are taken and where the records for all France are kept. There are many thousands of these records, but they are so classified and arranged that whenever an arrest is made and measurements taken it can be determined in a few moments whether the prisoner has ever before been under arrest or conviction.

While we were there a prisoner newly arrested was brought in for identification, and when his measurements were taken and turned over to the attendants in charge of the bureau, it was scarcely ten minutes before his photograph was brought, with a full account of a previous criminal record.

As an efficient agent for the repression of crime, the Bertillon system is of the highest value, and it ought to be in operation all over the United States, with a central bureau at Washington under the support and direction of the General Government.

SCHOOL FOR WARDERS.

A commendable feature in the French prison system is the school for warders, at La Sante prison in Paris. Here 48 chief warders from the provincial prisons come annually, in two parties of 24 each, staying for six months, during which time they receive instruction by lectures and classes in various branches of knowledge pertaining to their work. They also are taught the practical application of the Bertillon method of criminal identification.

PRISONS OF SWITZERLAND.

In Switzerland, as in the United States, there is no Federal control of prisons, and each of its twenty-two cantons has its own prisons, and, doubtless, as with us, some are good and some are bad. Of these, we visited three prisons and one reformatory.

The reformatory was near the city of Bern, and was very similar in construction and management to the reformatory at Ashford, England. Everything was very plain, but the 60 boys seemed well cared for, and the results reported were very satisfactory.

LENZBOURG.

The prison at Lenzbourg, in the Canton of Aargau, is said to be the best in Switzerland. It was built in 1864, and is a well-planned radiate structure, with three tiers of cells and a chapel. The cells are 8 by 9 feet and are warmed by steam. Here we found 176 prisoners, 43 of whom were women; 89 were felons, 44 misdemeanants; 17 were awaiting trial, and 26 were reformatory boys. A few of these prisoners were from other cantons. All prisoners, except recidivists, after three months in solitary confinement, are worked in association under the Auburn system in silence, with cellular separation at night.

Recidivists are under the separate system during the entire term of imprisonment. Short-term prisoners, not recidivists, work in shops at the rear of their cells, and each cell block constitutes a class by itself. In the north cell block on the first floor is cloth making; the second floor, shoemaking; third floor, shoemaking; fourth floor, schoolroom. In the west cell block the first floor, blacksmithing; second, carpentering; third, cabinetwork; fourth, bookbinding. The south cell block is occupied by female prisoners. All industries are upon State account, and all prisoners are fully occupied. In the Canton of Aargau there is no death penalty, and murderers are sentenced for life.

In this canton, with a population of 200,000, there are eleven districts with a local lockup in each, where prisoners awaiting trial are for the most part confined. The prison seemed well administered in all departments, and its director, as the prison governor is called, is an accomplished offical, and the prison staff are especially trained for their work, *and there* are no political changes in any Swiss prison. Attendance *upon chapel* services is not compulsory, but as a rule all go.

ST. GALL.

At St. Gall, in the canton of the same name, we found 144 prisoners, comprising felons, misdemeanants, and vagrants. All sentenced for a year or more are kept under the separate system. For less than a year they work in association. None are less than 16 years of age. The director is appointed by the Government for three years, but is now serving his third term. He nominates all subordinates. Prisoners can reduce their sentence by good conduct, and for such conduct receive 5 cents a day in addition to their good time.

Recidivists are not entitled to good time. Attendance upon chapel service is compulsory unless a prisoner has no religion, and so far there are none such. Three-fifths are Roman Catholics and two-fifths Protestants. The prison is inspected by five inspectors, who receive 5 francs ($1) a day for that service. Work is on State account, under a business manager.

BASEL.

At Basel we found a prison similar in most respects to St. Gall, with 198 prisoners—172 men and 26 women—and the total number for the year, 520. As at Lenzbourg, all prisoners are in solitary confinement for the first three months on piecework, and then work in association. The industries are shoemaking, brush making, tailoring, wickerwork, etc.

GERMAN PRISONS.

In Germany, as in Switzerland and the United States, there is no central authority for the control of prisons, and each province has its own regulations; but doubtless, as in America, they have a family resemblance to each other. The best of these prisons are said to be in Baden and Rhenish Prussia, where we visited several of them.

In Baden, as far as I could understand, there are four kinds of prisons, viz, district prisons, fortresses, houses of correction, and central prisons. The punishment in the first two is simply detention or deprivation of liberty, the district prison being for persons under examination and awaiting trial, or those sentenced to less than six weeks' imprisonment. Sentences above that term are endured in the central prison, which corresponds to the convict prisons in England, and the district prisons to British local prisons.

In each province, however, all prisons are controlled by its own central authority, or department of justice.

FREIBURG.

July 23 we visited the central or general prison at Freiburg, in Baden. Here we found 396 prisoners, all men, serving sentences from one to twenty years. There were also a few prisoners awaiting trial. About 100 prisoners are worked in association and the remainder in separate

cells. All would be separate except for want of cell room. All prisoners are at work in various industries, and their earnings pay about one-half of the running expenses of the prison. Prisoners are allowed a part of their earnings as an incentive to good conduct, which is given to them when they go out, or a prisoner may give one-half to his family during his imprisonment. If the prison authorities doubt his reformation, his earnings, on release, are given to the prisoners' aid association, to be disbursed in his behalf as they may deem best. A recidivist only gets one-fifth as much as other prisoners, and upon a second conviction he gets nothing. In the prison dietary short-term men get meat once in three days and soup three times a day, and coffee three mornings in a week; the physician can order a special diet. All industries are upon State account, under the direction of a business manager.

All prisoners under the separate system work in their cells and at chapel service they are so seated, in separate boxes, that they only see the officers and officiating clergyman on the platform, and in the schools also the same arrangement is maintained.

When out of their cells each prisoner wears a mask. All prisoners under 35 years of age go to school, in which there are six grades, or classes, and each class has three hours of instruction in a week under two regular teachers. Order is maintained by a military guard of nine soldiers, in three relays on the outer wall, and twelve civilian guards inside, of whom five are on duty at night, and the others sleep in cells which are about 10 by 12 feet in size and make comfortable bed rooms. Each prisoner has exercise for half an hour night and morning in the open air in airing courts, so arranged as not to see any other prisoner, but all are under the eye of a guard at a central point of observation. There are no corporal punishments and discipline is maintained by the deprivation of privileges.

The prison officers are appointed by the Grand Duke of Baden through the department of justice at Carlsruhe and all employees come in through strict civil-service rules and six months' probation, and service then becomes permanent during good behavior. The present director has been in charge for twelve years and is a very superior prison man. His salary is $1,500 a year. The prison is regularly visited and supervised by an inspector from the department of justice.

One noticeable feature in this prison, which was new to me, is the conference of prison officers, which is held in the director's room every third day. This conference is composed of the director, doctor, two chaplains, two teachers, and the bookkeeper, and by it all prison matters are carefully considered and discussed, and the director then determines what action shall be taken. We found similar conferences in other German and Belgian prisons, and they were considered of the highest value. Attached to the prison are 35 acres of ground upon which are dwelling houses that are furnished rent free to the officers. *Prisoners under* the separate system are visited daily by some of the

prison officials, and work for the day is assigned them. The chaplains must visit each prisoner in his cell at least once a month. There is also a bell call that he can use at any time in case of need. Upon the whole, the Freiburg prison is one of the best administered prisons that I saw in Europe.

BRUSCHAL PRISON.

July 24 we visited Bruschal male convict prison. It has 400 prisoners, and was built in 1848. Only high-grade criminals are confined here, and no sentences are for less than one year. In Baden the death penalty may be inflicted for murder by the guillotine, but it is usually commuted to a life sentence; only three have been executed in the province of Baden in three years.

At Bruschal the separate system prevails, but after three years prisoners may be worked in association. The regulations of the prison are mainly the same as at Freiburg, although there are some variations, e. g., prisoners have two hours a week in school instead of three. One prisoner in each corridor works outside, without a mask, in cleaning halls, carrying water, etc. Every prisoner without a trade is taught one by the labor overseer. The trades are carpentering, shoemaking, tailoring, coopering, basket making, rope making, and lock making. The official staff is the same as at Freiburg, and they have a conference twice a week, at which each officer makes a report, and discussion follows. The condition and progress of every prisoner is carefully considered. The overseer in each ward visits each cell several times a day to see the work of prisoners. The guard also sees the prisoners often and the teacher goes in when necessary. The chaplains visit twice a month, and the general director of work quite often. The prison governor sees every man in his cell once a month.

The Grand Duke of Baden has the power to pardon and the department of justice may parole. Prisoners' aid associations care for prisoners after discharge. In the German Empire there is a prison association for general conference, which meets every two years and is similar in its objects to our National Prison Association in America, which meets annually.

At Bruschal religious services are held in the chapel every day and attendance is compulsory, except for special reasons approved by the prison conference.

BRUSCHAL DISTRICT PRISON.

At Bruschal district prison there are both males and females, of whom there are four classes: (1) Criminal recidivists; (2) young criminals; (3) insane criminals (temporarily); (4) workhouse for women.

Men convicted four times come here. They work part separate and part in association. Young prisoners from 12 to 18 years of age come here, both boys and girls. Also, women criminals for long and short terms. All *young criminals go to* school six or eight hours a week. In

addition, two hours a week is given for wood carving, two for industrial training, and two for special trade schools. A boy at 18 is transferred to the convict prison at Bruschal or Freiburg. A girl at 18 goes to the women's department. The prisoners here do the washing for the male convict prison and also for the general prisons at Freiburg, Mannheim, and Rastadt. They also do baking for a number of private institutions, for which they are paid. The number of prisoners at the time of our visit was 395, as follows:

Criminal recidivists	104
Young criminals	56
Criminal insane	18
Adult women criminals	65
Workhouse women	134
Girls between 12 and 18	18
Total	395

MANNHEIM DISTRICT PRISON.

July 25 we visited the district prison at Mannheim, with 186 prisoners, all males under sentence from one month to three years, partly separate and partly in association. As a rule, the worst cases are alone. The prison was originally a nunnery, but was changed to a prison in 1700. The industries of the prison are stripping tobacco, making paper bags, tailoring, carpentering, and making locks. Prisoners under 36 years of age are taught reading, writing, and arithmetic by teachers from the public schools, in two classes, each seven hours a week. One hour a week in drawing is also given.

Two chaplains hold religious services twice a week and give their entire time to the visitation of prisoners, and must see every prisoner at least twice a month.

The director is appointed by the Grand Duke and nominates all subordinates, and these after three years' service, and found satisfactory, receive a permanent appointment, with pension upon retirement. The director was a judge of one of the courts and has been in service four years, and expects to return to the bench with the experience gained as a prison governor. The earnings of the prison are about 60 per cent of the running expenses.

MANNHEIM JAIL.

We also visited the Mannheim jail, with 39 prisoners awaiting trial, and 53 women, a part of whom were awaiting trial, and the remainder under sentence for short terms. Prisoners awaiting trial are furnished work if they wish it.

ROYAL PRUSSIAN PRISON.

July 26 we visited the Royal Prussian Prison, near Frankfort on the Main, with about 500 prisoners. It is a new radiate structure and well planned and well built. This is one of the three general convict prisons in Rhenish Prussia. The other two are at Cologne and Dussel-

dorf. They are under the control of the department of justice at Berlin. They resemble the prisons of Baden, but with some variations. No prisoners here are under sentence for more than ten years. Prisoners over one year can reduce sentence 25 per cent by good conduct, and receive one-third of their earnings. Prisoners work in their cells under the separate sytem, except a few for special work in association. The industries are numerous, among which are: Shoemaking, 11; making corsets, 71; knitting on machine, 71; tailoring, 18; paper sacks, 30; carpenters, 21; weaving, 10; brushes, 13; pulling hair, 22.

There is school room for 40, with four divisions. Each class has one hour each day. There is one teacher, with the chaplains to assist. The Protestant chaplain gives six hours a week and the Catholic four. Church services on Sunday and Bible class on Monday, and with attendance compulsory. Every evening there are singing exercises. Chaplains also visit prisoners in their cells. Prisons in Rhenish Prussia are under the control of the department of justice in Berlin.

COLOGNE.

At the Royal Convict Prison in Cologne we found 1,268 prisoners—1,034 men and 234 women. The women were in a separate building. With few exceptions the prisoners work in association and sleep in association—dormitories contain from 15 to 20 beds. As a rule the sentences are for less than five years. The discipline and management was much inferior to the prisons elsewhere in Germany, and upon the whole was more unsatisfactory than any others we saw in Europe.

BRAUWEILER WORKHOUSE.

At Brauweiler Workhouse, 4 miles from Cologne, we found 1,100 prisoners—900 men and 200 women. They are largely vagrants, tramps, and chronic drunkards. Drunkards are not considered chronics until the third or fourth offense. They are put to work at various industries, and the institution falls short of self-support only about 20 per cent. No prisoner is sent for less than six months, and may be retained two years, in the discretion of the director. They have religious service every day, and night schools. They have a conference of officers at least once a week and sometimes oftener. The buildings originally constituted a monastery and are ornamental and substantial. The religious services are held in the fine old chapel, and the cloisters are used for dining room and kitchen. This institution is a model of its kind and superior to any of our American workhouses in its system and administration.

DEPENDENT CHILDREN.

In dealing with dependent children the province of Rhenish Prussia has a system peculiar to itself. The province has an officer, with subordinates, who divide the province into districts, and they look after all dependent children as wards of the State. The boarding-out system is their main reliance, although for temporary shelter and prepara-

tion institutions for the care of children are provided, but it is only temporary, and they are then boarded out. Until 14 years of age they go to school. After 14 they are expected to learn a trade, and are placed out under supervision of some person, which is usually the local school-teacher.

FALLEN WOMEN.

Near Cologne is an institution for the reclamation of fallen women, under the charge of the Sisters of the Good Shepherd. Here we found 240 girls over 14 years of age, the most of whom had gone astray. They are kept until they become of age, or until they can go safely to a good place. They are taught various industries, and to all appearances are successfully handled, and two-thirds of the graduates are reported to have done well, and many of them are married and have good homes. The institution is admirably managed and is self-supporting. In fact, taking it all in all, in its various departments, I have never seen any other institution so complete in all its appointments and so scrupulously clean. The sisters are dedicated to their work for life, and receive no pay. Whatever property they had went into the general fund of the institution when they joined it. The spirit of Christian charity and kindness pervades the whole atmosphere of the institution, and the business ability displayed in the management is superb. There were 70 sisters at the institution, but some of them were in training for branch institutions elsewhere.

DUSSELDORF.

July 31 we visited the Provincial Prison at Dusseldorf, in which we found 489 male prisoners. It is a new, well-planned radiate prison with 488 cells for males and 80 for women, and only occupied about a year. The prisoners were mostly young men, and none sent for more than 15 years. The prison staff consists of the director, three instructors, two chaplains, a teacher, bookkeeper, cashier, and secretary. These officials hold a conference at least twice a week, at which all prison matters are considered and discussed, and the director then decides. The council also recommends pardons for such as are considered worthy. In every room there is hung upon the wall a numbered list of all articles, whether large or small, that belong to that room, for which the person in charge of the section to which the room belongs is responsible, and is held to a strict accountability. The general regulations are similar to those of Baden and Frankfort, and the entire administration seemed excellent. In this prison the separate system prevails, and prisoners work in their cells.

PRISONS OF HOLLAND.

The people of the Netherlands, in prison reforms, as in many other things, were pioneers, and their penal and correctional institutions are very creditable. There are four classes of prisons: (1) The central *prison for* persons sentenced to eighteen months and upward; (2) *detention prisons* for less than eighteen months; (3) prisons of arrest

for those sentenced to three months or less; (4) police prisons for those condemned to one month or under. In the last three named are also kept prisoners awaiting trial. All persons, except those for short terms, are, if possible, taught a trade. All prisons are cellular.

ARNHEIM PRISON.

The first prison visited was at Arnheim, in the province of Gelder land, and its plan of construction and arrangement is different from any other I have ever seen. It is built in a circle, and the tiers of cells are around a central court covered with glass. The cells are 9 by 13 feet. There were 216 prisoners, 10 of whom were women, and there were no sentences over five years. The separate system prevails, and all prisoners work in their cells, and the industries are upon state account. An account is kept with each prisoner and a portion of his earnings is allowed him. The entire administration was very commend able, and in cleanliness and sanitary arrangement it is unsurpassed.

THE NETHERLANDS METTRAY.

At Zutphen, 16 miles east of Arnheim, we visited a reformatory for boys known as the Netherlands Mettray, which is supported by voluntary contributions. There were 130 boys, committed by parents or magistrates, who came from all parts of the Netherlands. They are kept until 18 years of age, and after 14 learn a trade. There were four caretakers, two teachers, and the director. In Holland and Belgium the hours of labor are longer than elsewhere, and this rule extends to the reformatory. After 14 years of age the hours of work are: From 8 to 12 a. m., four hours; from 1 to 4.30 p. m., three and one-half hours; from 5 to 8 p. m., three hours. Making a total of ten and one-half hours, which to an American seems excessive and almost cruel, but it was in accordance with the customs of the country, and the boys seemed happy under it, and certainly they became accustomed to continuous labor. In the winter the hours are shortened to nine and one-half hours, closing at 7 p. m.

AMSTERDAM PRISON.

At Amsterdam, in the suburbs, we visited a prison with about 200 prisoners, 29 of whom were women. No sentences to exceed five years. This prison is supervised by eleven commissioners, called the college of regents, who serve without pay. The director is appointed by the Crown, and he nominates his subordinates. In Holland prisons there is no conference of officers, as in Germany. The prison regulations and management are practically the same as at Arnheim.

ALKMAR REFORMATORY.

At Alkmar, 40 miles north of Amsterdam, we visited what is known as an administrative reformatory for boys. This is a State institution with 101 boys committed by magistrates for crime or vagrancy, or

because of worthless parents. The place is inclosed by a wall, and what we saw of it did not compare favorably with similar institutions we saw elsewhere. For the first and only time in all Europe, we were refused admission to the interior departments, for the reason, alleged by the director, that our permit from the department of justice did not name reformatories in so many words, and only specified prisons and workhouses. Evidently the greater included the less, but the director was inexorable. However, we saw enough to satisfy ourselves that our exclusion was no great loss. The boys were outside in the yard, under military drill, without uniform or arms, and we could see in passing the shops that the ordinary trades of such institutions were taught.

THE HAGUE.

We also visited an old prison at The Hague, which is no longer of much use except as a curiosity. A small part is retained in use as a station house. The remainder is only kept as an object lesson of the horrors of prison cruelties in previous centuries. Here all of the old instruments of torture are on exhibition, and we realize more fully how great is the progress that has been made during the present century, and can thank God and take courage for the century to come.

ROTTERDAM.

At Rotterdam we visited a modern radiate and cellular prison with 260 prisoners under sentences not exceding five years. All are under the Pennsylvania, or separate system, and each prisoner works in his cell. The industries are various, but are mainly tailoring, cabinetmaking, carpentering, weaving, and mat making. There are no corporal punishments, and no conference of officers, as in Germany, but each officer reports to the director every morning. The prison seemed well administered in all departments.

PRISONS OF BELGIUM.

Belgium is the only country in the world in which the Pennsylvania system of absolute separation of prisoners of all grades and terms of sentence is in operation, except long-term prisoners after ten years' service. At the end of that period a prisoner may claim to go into association, and they are then removed to Ghent, where they work and eat in company, but have separate sleeping cells. In all prisons except Ghent the prisoner never leaves his cell save for chapel or exercise; at the former he is in a separate box or compartment, the latter he takes alone in a narrow yard. His life, however, is not one of absolute solitude. He is visited frequently by his warders and schoolmasters and trade instructors; chaplain, governor, and doctor also break the monotony of his life. According to the Belgium view of the case, he lives in association with the prison staff, not with his fellow-criminals.

That there are advantages in this system is evident, and penologists *generally*, the world over, concede that absolute separation should be

the rule for prisoners awaiting trial, and largely for short-term prisoners under definite sentences; but beyond that there are so many disadvantages and objections that in America the system has been entirely abandoned, except at the Eastern Penitentiary of Pennsylvania, and it is not likely to be extended except for the classes of prisoners hereinbefore mentioned, and for whom it is greatly to be desired.

The Belgium prisons in their entirety are the best administered in the world, and worthy of imitation in many directions.

PRISON AT LOUVAIN.

The prison at Louvain is for high criminals, with no sentences less than five years. It is radiate in form, with 600 cells and an average of about 500 prisoners. Separation is the most complete of any seen anywhere. The rules require the chaplains, of which there are two, to visit 50 prisoners every day, and the director 20; but they do not find it practicable to do so continuously. The prisoners, however, are visited every day by directors of work and other officers. There is a conference of officers every morning to hear reports and arrange for the duties of the day. Long-term prisoners, after ten years, are allowed to go to Ghent if they so desire, but it is claimed that hardly one in a hundred so chooses. Cells are 8 by 13 in size, and are heated by hot water. There are three tiers of cells above the basement, and three grades of prisoners. Those of the first grade receive one-half of their earnings, those of the second grade four-tenths, and those of the third grade three-tenths. The industries of the prison are various, and every prisoner who has no trade is carefully taught one in a regular apprenticeship. All illiterate prisoners are taught reading, writing, arithmetic, elementary notions of grammar, history, and geography, and the elements of geometry and linear drawing. Libraries are found in all prisons, containing not only works of a religious and instructive nature, but also romances, poetry, and other entertaining books, all of which, however, are of a moral and improving type. The exercises of worship and religious instruction are organized with great care, and the religious sentiment is regarded as the most important element in penitentiary education.

The organization of the prison staff is very complete. The employees begin, so to speak, on the lowest round of the ladder, and step by step they may reach the position of director; and no one is considered fit to be a director except through long training and experience. In perfection of administration there is no prison in the world superior to that at Louvain.

BRUSSELS PRISON.

In the prison at Brussels we found 530 prisoners, all males, with sentences varying from six months to five years. The prison is radiate, and is similar in construction and administration to Louvain. Here there are three chaplains (Catholic priests) and two teachers, who give

their entire time to the work. The prison is visited and inspected monthly by a board appointed by the director of prisons of the department of justice. They serve without pay and are eight in number. Committees of prisoners' aid associations also visit the prison. No corporal punishments are permitted in Belgium, and there are no capital punishments. For twenty-five years all sentences to death have been commuted to imprisonment for life, and that is now the established rule.

GHENT PRISON.

The Ghent prison for more than a century has been the model of the world in construction and administration. This was the first prison, and about the only one, that John Howard could fully commend. The prison was clearly the model of the prison at Philadelphia.

Here we found about 1,200 prisoners. The prison is divided into eight sections: A is for administration; B, for prisoners with sentences from one to three months; C, three to six months; D, life prisoners; E, hospital and administration; F, boys from 16 to 18; G, boys from 18 to 21; H, for prisoners for whom there was no room at Louvain.

Each division is kept entirely separate from the other divisions. There are three tiers of cells and a basement. The upper and lower tiers are used for workshops, chapel, dining rooms, etc., with a separate dining room for each section. However, there is but one kitchen for all the sections. With the exception of section H, all prisoners are under the Auburn system of associated labor by day and cellular separation by night, and in its administration it has no superior.

CONCLUSION.

From this review of European prisons, my conclusions are that whatever superiority they have, and in which we would do well to imitate them, is, namely:

(1) In the separation of prisoners awaiting trial.

(2) In the greater efficiency of administration by trained experts and a continuous service.

(3) In the post-penitentiary treatment of prisoners through prisoners' aid societies.

In some directions America is clearly in advance of Europe:

(1) Our Elmira system of progressive classification under the indeterminate sentence.

(2) In our system of juvenile reformatories.

(3) In the Massachusetts system of probation under suspended sentences.

So, when we come to balance accounts, Europe has about as much to learn from America as America has from Europe, so that there is no occasion for boasting on either side, but every reason to exchange experiences and compare methods and endeavor in all directions to make *progress in the future.*

THE BERTILLON SYSTEM.

By Maj. R. W. McClaughry.

In 1881, when the question of deportation of habitual criminals agitated the minds of the French people and was discussed in the National Assembly, M. Alphonse Bertillon first presented to the public of Paris a method of describing persons and identifying individuals vastly superior to all the old methods, with their vague indications of a person's height, the color of his hair and eyes, his complexion, the size or form of his nose, chin, forehead, etc.

To show the defects of the old methods M. Bertillon stated, from personal measurements and observations made in Paris with over 10,000 subjects, that among a hundred persons of same height thus observed 87 had what is commonly called "brown" hair, 10 had blonde hair, 2.7 had black hair, and 0.3 (3 in every 1,000) had red hair.

A person with "brown" hair has, therefore, no distinction from nine-tenths of the total population. In other words, in nine out of ten times a description of the color of the hair would be useless, or nearly so. The color of the hair, therefore, has a characteristic descriptive power only with the blonde, black, and red headed. One might as well, in a lesser proportion, require a man's description to state whether he was a hunchback or not. An individual ranged in the category of nonhunchbacks would have this characteristic common with 9,999 out of every 10,000 persons. Still more difficult is description considered in connection with the terms "long, large, medium, small," etc., which, in ordinary descriptions, means to convey an idea of the appearance of the nose, forehead, mouth, etc. One sees hardly anything else but "medium;" and what appears small to one person to-day may to-morrow be described as large by another.

Similar difficulties appear in the description of the color of the eye, one-third of the subjects observed of even height having hazel eyes, one-fourth what is commonly styled gray, one-seventh blue, and one-fourth of indistinct color.

The same with the height. Nearly one-third of all measured, range, within the small limit, between 1.65 meters to 1.70 meters; one-third from the dwarf to 1.65 meters, and one-third from 1.70 meters to the giant.

These are the principal features of the old-style descriptions.

Photographs, while valuable in verifying the identity of an individual, are altogether impotent to help you discover this identity, if you have no other means but your eyes to search for the picture among the thousands in an ordinary collection.

All these difficulties are obviated by the new Bertillon method of identification, which consists of the measurement and subsequent classification and subdivision of such parts of the human body as do not change in size after a person has attained his full growth—such as the length and width of the head, the length of the middle and little fingers, the length of the foot, forearm, etc., the height of the figure, the measurement of the outstretched arms, and the trunk of a person seated, etc. A man individualized by measurements of this character is mathematically identified. This system proceeds upon the known basis that it is practically impossible to find two persons showing exactly the same anthropometric indications in every particular just mentioned; consequently accurate measurement of each individual will invariable lead to his identification and separation from all others.

But in order that this identification may be of use in discovering the habitual criminal, a system of classification is required by which such a result may be reached without great expenditure of time and trouble in searching.

Suppose we have a collection of 60,000 descriptions of men, and divide them into three equal groups, according to the measurement of the length of the head—those with small length, 20,000; those with medium length, 20,000; those with large length, 20,000.

To make these groups approximately equal it is evidently necessary that the series of medium length of head should be of less extent than those of large or small length, and should contain, for instance, only the individuals measuring from 19 to 19.4 centimeters (metric system), while that of large length should contain all the individuals measuring 19.5 and more, and that of the small length all those measuring less than 19 centimeters.

The same rule is applicable to the classification of all measurements, as nature itself commends and treads the "golden mean" in preference to the abnormally small or large. Each one of these original divisions is then subdivided, on the same principle, without regard to the length of the head of the individual, into three groups, according to the width of the head. These new subdivisions, numbering $3 \times 3 = 9$, would then contain those with heads of small width, 6,000 descriptions and over; of medium width, 6,000 descriptions and over; of large width, 6,000 descriptions and over.

Experience proves that the width of the head of most people varies independently of the length. In other words, if the head of an individual measures a certain length it does not necessarily follow that its *width can, even* approximately, be determined thereby.

The length of the middle finger will give a third indication, dividing the 9 groups we already have into 3 groups each, making 27 groups in all, with the following result: Those with small middle finger, 2,000 descriptions; with medium middle finger, 2,000 descriptions; with large middle finger, 2,000 descriptions.

Another subdivision by the measurement of the foot (in three classes—small, medium, and large) will reduce the 27 groups of 2,000 into 81 of over 600 each. Each will again be subdivided into still smaller groups by taking the forearm as basis of subdivision. Another subdivision is effected by the measurement of the height, another by the little finger, the ear, etc. A division of the length of the forearm would give a quotient of 200, reduced by a division of the height to 66, again reduced by the little finger to 22, by the ear to 7, and so on. The meaning of all this is that by the means of 8 coefficient anthorpometric measurements, each divided into 3 mathematically defined classes of small, medium, and large, a collection of as many as 60,000 descriptions could be divided into groups of no more than 7 or 8 descriptions each, which it would be an easy matter to examine rapidly and carefully, and with the desired results.

Suppose, again, that a criminal is arrested under an assumed name, and we wish to ascertain whether he has been measured and photographed before. We take an exact measurement of the length of his head and will know at once in which of the main divisions we can find his name. The width of his head will lead us more specifically to the place his description can be found. The length of his middle finger, of his foot, forearm, height, little finger, ear, etc., will enable us to arrive at the exact place where his photograph and description have been filed—if at all.

If a measurement coincides exactly with the figures on the limit of a division, the search has also to be made in the next lower or higher adjoining division.

Experience has demonstrated that the different parts of the human body are not by any means in constant congruity, one with each other. One person is of small stature, but has a large head and large feet; another has small feet and short fingers, but is of tall stature. The variations in individuals are so great, and the precision of the measurements so minute and perfect, that among a hundred thousand subjects there are hardly ten who will show even approximate figures on every indication. But even these few can, by the description, according to the Bertillon method, of the eye and the nose, and the form and location of accidental scars and marks, be individualized, almost beyond a possible doubt or confusion.

If I know how to spell a word, "bread," for instance, and wish to find it and its definition in the dictionary, I look first for the letter B, eliminating the 25 other letters of the alphabet; then I find R as a subdivision to B, then E as a *subdivision to BR*, then A and D in a similar way,

until I find that very word in the only place in the dictionary where, if correctly spelled, it can properly be filed. Similar analyses and elimination are made in searching for a description in an anthropometrical file, with results almost equally favorable.

The volume containing M. Bertillon's instructions for taking anthropometric descriptions will bear convincing testimony to the thorough and thoughtful manner in which he has treated his subject. Of necessity he enters minutely into the details of execution, but demonstrates that the practice of it is very simple, expeditious, and easily learned; that it is an operation, the performance of which is within the range of the intelligence of an ordinary person and requires but a few minutes of time.

The history of the practical application of the Bertillon method of identification runs back, even in France, but a few years. Inaugurated by the prefecture of police in Paris at the end of 1882, 49 individuals were, by this method exclusively, recognized as habitual criminals in 1883, after all other means of identification had failed; 241 were by the same means identified in 1884, more than 500 in 1885, and a proportionally increasing number for each year since.

The intrinsic value of the system, recognized and proven by such results, so strongly recommended itself to M. Herbette, councilor of state and director-general of the penitentiary administration in France (a branch of the department of the interior), that he lent M. Bertillon his powerful assistance in getting the system officially recognized and extended throughout France, where, in police as well as penitentiary circles, it is now universally adopted and successfully practiced.

The public press in various parts of the country has from time to time favorably commented on the system as practiced in the United States. Professors of colleges and universities have looked into its workings and pronounced it a success. Officers of the army are seriously considering it with a view of advocating its adoption for the identification of deserters; and departments of police all over the United States are beginning to appreciate its merits, and to assist in its general adoption. The Bertillon system is in a fair way of becoming a fixture of permanent and universal usefulness in the United States and Canada.

Words need not be wasted in demonstrating the utility of the Bertillon system in the identification of criminals and in the separation of the habitual or professional from the occasional or first offender, or in pointing out the facilities in recording descriptions it offers to police officials, the wardens of prisons and penitentiaries, and the superintendents of reformatories.

The objection has been raised that such an accurate and minute description of a man as the Bertillon method affords would do great injury to the first or occasional offender by placing him in the same category and in the same files with hardened and professional crimi-

nals. This is a fallacious and misleading argument. On the contrary, the Bertillon method gives more protection to that class of unfortunates than any other mode hitherto practiced in describing a person. The description of an individual, according to the Bertillon method, is buried and hidden in the classified files, never again to be resurrected or examined, unless called forth by a duplicate description taken from the identical person and occasioned by a subsequent offense.

The general utility of the system can not be better elucidated than by quoting some of the remarks made concerning it by M. Herbette at the International Prison Congress at Rome, in November, 1885.

He set forth all the services already rendered by the system of anthropometric descriptions, together with those that it would yet be called on to perform. He dwelt upon the assistance that the system could be called upon to render toward identifying international malefactors, who so readily adopt names and countries other than their own. Crime becoming in some sort professional, and, as it were, a specialty in the hands of a few individuals who know how to profit by the progress of civilization and escape repression, it is natural that society should, in retaliation, avail itself of the discoveries of science in order to baffle their schemes.

The application of M. Bertillon's method has justified the hopes it inspired. At Paris, at Versailles, at Melun, at Poissy, at Lyons, etc., the system is adopted in its integrity. A few days have sufficed to teach it to the guards and officers in charge.

Ascending to more general considerations, and praising the successful efforts of M. Bertillon, M. Herbette demonstrated how this ascertainment of the physical personality and undeniable identity of individuals, arrived at an adult age, may be made to answer for needs the most real and service the most varied:

Should it be a question, for example, of giving to the inhabitants of a country, the soldiers of an army, or travelers visiting the most distant lands, individual descriptions or charts of peculiar marks enabling them to identify themselves, or be recognized at all times; should it be a question of preventing false impersonations; should it be a question of recording all the distinctive marks on an individual on bank drafts and letters of credit, or in documents, titles, and contracts, where it is desirable that his personality should be established for his own interest, for the interest of third parties, or for the interest of the State, the system of anthropometric descriptions will in each instance find its proper office. Should there be a certificate of life, a policy of life insurance, or occasionally a certificate of death to be drawn up; should there be something needed to certify to the identity of an insane or unconscious person, who may be seriously wounded or disfigured so that he can hardly be recognized; in case of sudden or violent death, the result of crime, of accident, of shipwreck, of battle, how serviceable it would be to trace these private marks, unchangeable in each individual, endlessly variable between individuals, indelible, in part at least, until death.

The advantage of it would be still more manifest if it were necessary to establish the identity of people far away, after a lapse of time, when their external appearance, their physiognomy, their features, and physical habits have become changed, either naturally or artificially; *and that* without removal or expense, by a simple

exchange of notes or figures forwarded from one country to another, from one continent to another, in a manner to make it known in the United States who such a man is who came from France, and to ascertain whether such and such a traveler met with at Rome is indeed the same person who was measured at Stockholm ten years before.

In a word, to fix the human personality, to give each human being an identity and individuality certain, durable, invariable, always recognizable and always capable of being proven—such seems to be the broadest aim of the new system.

It may be said, in consequence, that the range of the problem, as well as the importance of its solution, passes far beyond the limits of penitentiary work, and of the interest (although quite considerable) in the action to be taken on penal questions by the various nations.

Such are the motives that have induced us to give the labors of M. Bertillon and their practical usefulness the publicity that befits them.

In conclusion, one thing more ought not to be lost sight of. I quote M. Bertillon's own words:

Although the details of the system have been decided on, I would not refuse to adopt any new modification offering superior advantages, no matter how the change might affect the French collections to date. ¶ beg of the prison and police authorities of other countries, who are disposed to adopt the anthropometric system, not to introduce special modifications of their own, which would tend to destroy the uniformity of the system, when it is an easy matter for all to act in concert as regards the different measurements to be taken, the choice of instruments, and the modus operandi.

It is at the very outset of these questions that we must lay the foundation for the future internationalization of the system, without waiting for routine on one hand, and the yearly accumulations of dissimilar informations on the other, to put insurmountable obstacles in the way.

ANTHROPOMETRIC MEASUREMENTS.

By Paul Richard Brown, M. D.,
Major and Surgeon, United States Army.

Quetelet, the illustrious Belgian scientist, first demonstrated the fact that mathematical laws determine the distribution of the forms and dimensions of all animate things. The frequency with which a form or dimension occurs progressively diminishes as it is removed from the mean. This decrease is in almost exact concordance with a simple mathematical formula: Newton's binomial theorem—the law of the coefficients of the binomial in its development.

If we go into a forest of oaks of every age and size, what an infinite variety not only in heights, but in forms. However, if we examine into the matter a little more closely; if we classify all the trees according to their ages, there will be an entirely different aspect of affairs; there still will be differences in heights, but between the tallest and shortest trees all the others will be grouped in accordance with the law above mentioned.

The trees of average height will form much the most numerous group, and in proportion as the various trees are removed from this average height they will become rarer and rarer. At the extreme limits there will be only a few exceptional individuals. This numerical decrease is not simply a result which is observed but it can be mathematically calculated independently of all observation. The number of trees, whether giants or dwarfs, is determined according to a law as fixed as that which presides over the symmetrical development and arrangement of their leaves. The mean of form or dimension may vary greatly, so far as man is concerned, from one race to another, but the mean once found, there need be no further difficulty. For instance, so far as the height is concerned in each country the oscillations will be about a mean greater or smaller which will be determined by the influence of race, climate, differences in food and occupation, etc. As all the forms and dimensions of man oscillate or vary between a maximum and a minimum, necessarily the forms and dimensions intermediate between these two extremes will form much the largest proportion of the cases; hence the necessity of three grand divisions—the small, the medium, and the great.

The terms describing these divisions of forms and dimensions may greatly vary, but the dominant idea will always be the same. It has been conclusively demonstrated that after 21 years of age, the various bony lengths of the human body remain practically unchangeable throughout life, and vary greatly from one individual to another. The Bertillon system of anthropometric identification is simply a practical application of the great scientific truths discovered by Quetelet and published to the world by him in his work upon anthropometry, and but for this philosopher there would have been no so-called Bertillon system.

The identification of criminals is only a part, an important part it is true, of the Bertillon system. It has aims loftier and greater than the mere determination of the personal identity of criminals. In many ways a determination of physical personality may be advantageous to society in general independently of its efficacy in the prevention and repression of crime. Wherever and whenever the establishment of the identity of an individual is essential to secure his interests, the interests of his associates, or those of the State, the Bertillon system is capable of rendering valuable service. If we wish to determine the identity of a victim of a railway accident, of a soldier killed in battle—in all cases where the body has been destroyed to such an extent that it is unrecognizable by any of the ordinary methods of identification—the Bertillon system again proves its value.

Numerous cases have been brought to light by the agents of the United States Pension Bureau where individuals have assumed the name and civil condition of other persons and for years have fraudulently been drawing pensions from the Government.

Had the soldier whose name has thus been appropriated been measured and examined according to this system on his entry into the service, no such fraud would have been possible, or at all events would soon have been detected. Had a similar system been in use in our armies during our last war, there would have been no bounty jumping, which at one time threatened the integrity of the Army of the Potomac. Were this system in general use, a dead body at the morgue, a man attacked by paralysis on the street and unable to give his name and address, a lunatic running amuck, etc., could readily be identified and there would be no danger of having those nearest and dearest to us consigned to the oblivion of the potter's field. The famous Tichborn claimant case could have been settled in five minutes had both parties been previously examined and measured. Hundreds of applications of this system, entirely distinct from criminal identification, will suggest themselves to anyone familiar with its principles.

An international extension of this system would soon terminate the depredations of foreign criminals who change their names with every change of domicile. Professional criminals are quick to utilize to their *own advantage* every improvement made in the arts and sciences bear-

ing upon their specialties. The use of dynamite for the purpose of destroying the locks of safes may be mentioned as an illustration.

Criminology should likewise have recourse to these discoveries whenever their employment is likely to foil the stratagems of professional, habitual criminals.

The Bertillon system is not in the experimental stage; the problem of anthropometric identification has been solved and the sociological value of this method clearly demonstrated by a practical test, which in France has extended over a period exceeding ten years. This system is in general use throughout France, Belgium, Switzerland, Russia, several South American Republics, and is now being introduced into England, so slow to adopt new methods, especially if they are French.

In the United States it is in practical operation in Illinois (introduced by Maj. R. W. McClaughry in 1887), Michigan, Wisconsin, and within the last eighteen months it has been legalized in the State of Massachusetts. On the 6th of March, 1896, it was also formally and definitely adopted by the police department of the city of New York.

It may be asked how the Bertillon system can aid in the capture of a criminal who is at large. It can not, unless he previously has been measured and examined. Let us suppose, for instance, that a murder has been committed in Chicago and the murderer arrested and measured, but by some means he manages to escape. He comes to New York and is arrested for some trivial offense—vagrancy, for example. The Chicago measurements having been mailed or telegraphed from that city to New York at the time of this criminal's escape, the man is at once identified. Were this system in practical operation throughout the whole country, all the professional criminals of the United States would soon be known to the police authorities of our large cities. When France adopted the Bertillon system, there was an exodus of habitual criminals to Belgium; Belgium in self-defense adopted it and the malefactors flocked into Switzerland. When Switzerland, in turn, fell into line, there was a hegira to other countries, etc. The Bertillon system consists of three distinct parts: First, the measurements of certain bony lengths of the human body, called anthropometric; second, a systematic analysis of the features of the face; third, an exact anatomical localization of the various scars, marks, congenital or acquired, of the subject under examination. Of the various bony lengths of the body, Bertillon has selected certain of these lengths which vary greatly from one individual to another and which admit of easy measurement and of still easier classification.

These lengths are as follows: The antero-posterior and transverse diameters of the head; the bizygomatic diameter; the length of the middle finger; the length of the little finger; the length of the foot; the cubit or distance from the point of elbow to the end of the middle finger; the stretch or distance between the extremities of the middle fingers when the arms are extended crossways; the height proper and

the height of the subject when seated. To these measurements are added the length of the ear, an organ which is virtually unalterable throughout life.

The measurements of the head, middle finger, foot and cubit, which are capable of being taken with more exactness than the others, may be termed the grand classification measurements. The instruments employed are a head caliper and two measures which somewhat resemble those employed by shoemakers. There is also a plain wooden measure for taking the height and trunk. They are inexpensive, and in an hour's time any schoolboy 15 years old of average intelligence can be taught their modus operandi. After these various measurements come a systematic analysis and classification of the features of the face in accordance with the same grand principle enunciated above; the oscillation of all forms and dimensions between a maximum and a minimum. The results of these analyses are called descriptive data. They apply both to form and dimension. The following analysis of the profile or outline of the bridge and base of the nose will give an idea of these analyses:

The profile of the bridge of the nose may be rectilinear (the mean), convex, or concave (the extremes), and the qualifying term sinuous, if necessary, may be applied to each one of the above forms. Thus a nose would be called convex-sinuous in which the general profile of the bridge of the nose was convex and also somewhat undulating. The base of the nose may be horizontal (the mean), elevated, or depressed (the extremes).

Thus it will be seen that a nose with convex, rectilinear, or concave bridge may be elevated, horizontal, or depressed so far as its base is concerned. By the use of the parentheses and underlining we can modify each of the above qualificatives. For instance, employing these characters, the series of concave nose bridges could be arranged as follows: (concave), concave, *concave.*

The word concave within parentheses would signify a nose bridge but *slightly* concave, the word concave without parentheses or underlining would be interpreted as middling concave, and concave underlined as *markedly* concave. It is thus evident that the outline of the bridge of the nose may be the subject of seven appellatives as follows: *Convex,* convex, (convex), rectilinear, (concave), concave, *concave.* This form of seriation may also be applied to any feature of the face. The eyes are classified according to the amount of orange-yellow pigmentation presented by the iris, the scale extending from the pale-blue eyes of the blonde races of the Scandinavian peninsula to the maroon or very dark-brown eyes of the inhabitants of the Dark Continent. There are seven classes in all, each with nine subdivisions, which are indicated on a chromolithographic chart. Certain data are also noted in regard to the coloration of the complexion, which may be pigmentary or sanguineous, or a combination of both.

The pigmentary coloration takes into consideration the amount of pigment or coloring matter in the skin; the sanguineous, the amount of blood circulating through the skin, which its transparency enables us to perceive. Thus, with a florid Englishman the sanguineous coloration would be great, and the pigmentary coloration slight; with a pale, dark Italian the sanguineous coloration would be slight, and the pigmentary coloration great. The third part of the Bertillon system consists in an exact anatomical localization of the scars, marks, and deformities of the subject examined.

Certain anatomical points, called guiding points, are employed to determine their exact location. For instance, for the chest the nipples and the fork or notch between the collar bones are used as guiding points, and for the abdomen the navel. The imaginary line called the median line is also a means of localization. A tattoo mark of a heart transfixed with a dagger, located upon the breast of a subject, would thus be described: Pierced heart, 3 by 2 centimeters, at 4 centimeters under right nipple and at 5 centimeters from median line of body; that is, an imaginary line dividing the body antero-posteriorly into two equal parts. As regards the time required for making these various measurements, descriptive analyses, and anatomical localizations, Bertillon himself says "that with two individuals, one measuring, examining, and dictating, and the other recording, the time employed in making one examination is usually seven minutes." Bertillon has devised an ingenious system of abbreviations for the registration of the various descriptive data, marks, etc., which materially shortens the time of operation.

The question may now be asked whether an individual of average ability can readily learn this method which at first sight may seem somewhat complicated and abstruse. If the directions of Bertillon are faithfully carried out, the average policeman can, after an hour's instruction, make all the measurements required; in less than a week's time all the knowledge required to put the system in practical operation can easily be acquired.

In Paris and several of the large cities of France the subject is also photographed, profile and full face, on cards a trifle smaller than the ordinary carte de visite photograph. These photographs have a reduction of one-seventh, and the negatives are never retouched. The phrase reduction of one seventh may possibly not be fully understood and some further explanation may be necessary. In other words, any length upon a subject sitting in the photographic chair will be reduced to one-seventh its original length in the ground glass plate of the camera. If our hypothetical subject holds a rod 28 centimeters long at the external angle of his left eye, the image of this rod reflected on the ground glass plate should be 4 centimeters in length.

The distance required between the camera and the subject in order to have this reduction will be found by having someone hold a rod similar

to the one just mentioned, and then increasing or lessening the distance until the proper reduction is ascertained. This distance once found, the supports of the camera and the chair should be permanently fastened to the floor of the studio.

The classification of the results obtained will next demand notice. Certain measurements above mentioned have been termed the five grand classification measurements, viz, length and width of head, length of middle finger, length of foot, and length of cubit. Following out the dominant idea of the system, a head length may be small, medium, or great and the other measurements may be qualified with the same terms.

In the central office at Paris there are two large cases filled with pigeonholes, one designed for the alphabetical classification of the descriptive cards, the other for their anthropometric classification, duplicate cards being made out for each subject examined. The anthropometric case is divided horizontally into three equal compartments for lengths of head and vertically into three other divisions for breadths of head, and further subdivided for the three classes of middle finger, foot, and cubit lengths. The anthropometric descriptive cards are filed in lidless sliding boxes upon the front of which are pasted paper slips with the roman numerals I to V, inclusive, printed upon them, these numerals corresponding to the grand classification measurements to be found in that particular box. Suppose now, for example, that a criminal or suspect has just been brought to the central office of the prefecture of police and the authorities desire to ascertain if he ever has been measured and examined. If this be the case, and he gives his true name, the task is easy; a search is at once made in the alphabetical collection and his descriptive card immediately found. But the prisoner may claim that he has never before been arrested. His various measurements are then taken, his descriptive data registered, and his scars, peculiar marks, etc., noted and recorded.

Search is then made in the anthropometric collection. This collection now contains something over 150,000 descriptive cards. We read on the card just made out that the subject's head length is 187 millimeters. As the medium class of head lengths extends from 185 to 190 millimeters, both numbers inclusive, we at once put him in the medium class, and thus eliminate 100,000 cards from the collection.

We find that his head breadth is small, and, following out the same principle, we eliminate two-thirds of the remaining 50,000, or about 33,334, leaving still remaining 16,666. The same method of elimination is then pursued with the length of the middle finger, and we reduce the number of cards in the collection to 5,555. Again eliminating by the length of the foot, we make a further reduction to 1,850, which is still further reduced by the cubit to a group of about 620. The height reduces this last number to about 205 cards which is again subdivided, always following out the same plan, by the bizygomatic diameter, the *length of the* little finger, the length of the ear, height of trunk, and

stretch to a final group of about a dozen cards, which are arranged according to the color classes of the iris. After the various measurements have disclosed the location of the card, the descriptive data and anatomical localization of the various scars, marks, etc., absolutely prove, beyond the shadow of a doubt, that one and the same individual is described in both cards.

In Bertillon's work upon Anthropometric Identification full directions may be found in regard to the manipulation of the anthropometric instruments, and peculiarly excellent plates render it almost impossible for the most stupid individual to misunderstand the directions. Full information will also there be found in regard to the correct manner of observing the various features, making out the descriptive data, the anatomical registration of the scars, marks, etc. Various plates explain to the reader his own position and that of the subject during the various measurements. No possible mistake can be made by anyone carefully following out Bertillon's directions in all their minutiæ. In this hurried résumé only the barest outlines of this system have been given, which seems to me more and more wonderful the more I know of it.

When I think of the vast results of which it is capable in the prevention and repression of crime, I believe I do not exaggerate when I say that Quetelet and Bertillon are two of the greatest benefactors of the human race which this century has brought forth, and that the jurists and criminologists of the twentieth century will be amazed when they read of the stupidity and ignorance of those nations that did not adopt this wonderful system of anthropometric identification as soon as it was made known to them.

THE DISCHARGED CONVICT IN EUROPE.

By Samuel J. Barrows.

In a trip made to Europe in 1892–93 the writer visited many European prisons, and also gained some information in regard to work for discharged convicts in European countries. His presence as a delegate to the International Prison Congress at Paris in July, 1895, offered an opportunity for special inquiry and for securing information through personal conference and official reports not easily obtained elsewhere.

More than a year before the meeting of the Paris Congress a series of questions was sent to officials and delegates of different countries, inviting the preparation of statistics and monograph concerning the administration of prisons. Included in these questions were some bearing upon work for discharged convicts. One of these questions was what amount prisoners might save in prison in preparation for their discharge; second, what means should be taken after discharge to see that this money was not wasted. A third question related to the existence and activity of prisoners' aid societies.

As usual in the collection of such data, too many countries failed to respond. Nevertheless, the result was the preparation of some valuable monographs and reports in different countries.

The limits of this paper will permit nothing but the briefest summary of principles, methods, and results which these reports illustrate.

FRANCE.

The monographs concerning French institutions are among the most complete. Among the prisons chosen to illustrate the system are those of Melun, Poissy, and Berrouaghia for men; the Maison Centrale de Rennes for women; the prisons celulaire d'Angers and of Lyons and of Rouen for both sexes, and several establishments for boys and girls. In the French system prisoners are allowed a certain portion of their earnings. This is divided into two parts, one of which they may dispose of while in prison, the other constituting a reserve against the time of discharge.

The Maison Centrale de Melun has a prison population of 605. The average amount accruing to the prisoner on his discharge is, for three

years of detention, 250 francs; four years, 350 francs; five years, 450 francs. A part of their earnings may be sent to their families during their imprisonment, or may be spent for fruit, letters, and other expenses approved of by the administration. A portion of the reserve is applied to the cost of clothing and of sending the prisoner to his home. The rest is sent by postal order to his place of residence. Only those who are pardoned or liberated conditionally receive their money at their discharge. Prisoners may voluntarily place their reserve in the hands of the societies of patronage, as most of the prisoners' aid societies in France are called, the society acting as a savings bank. Outside of this no special measures are taken to prevent the prisoner from wasting his earnings. A society of patronage at Melun assists every year 1,200 tramps—mendicants and tramps—but we are told that the discharged prisoners of the Centrale Maison rarely apply for its benevolent intervention.

At Poissy the average amounts given to discharged prisoners from their earnings are for one year, 81 francs ($16.20); two years, 187 francs ($35.40); three years, 373 francs ($74.60); four years, 407 francs ($81.40); five years, 562 francs ($112.40). These figures are so variable that the difference obtained by some workers in three years is superior to those obtained by others in four years. Prisoners' aid societies aid the condemned at their liberation, after having received information in regard to their sincerity and worthiness from the prison administration. They seek work for them and try to establish them in friendly relations in the section of country from which they have come, or they shelter them in asylums for some days. At Poissy, four societies lend their aid to discharged prisoners. There is the Société générale pour le patronage des libérés which was established in 1871 whose seat is at Paris. Its president is the distinguished senator, legislator, and penologist, M. Bérenger. This society holds special relations with the director. The conditionally liberated who are not immediately able to find employment are received provisionally in a special asylum where they are assisted by work. The reserve gained in prison remains in the hand of the society until the protégés are properly placed. A second society is the Société centrale de patronage des libérés, whose president is M. Steeg, inspector-general of primary education. Its seat is at Paris and and at Versailles. Every month a delegate visits the prison and questions the prisoners who are nearing their discharge. The special end of the society is to reconcile prisoners with their families or to serve as an intermediary between the condemned and other persons. A third society has for its object the aid of volunteers in the military service who may be found in correctional establishments and who undergo imprisonment before their conscription. These young prisoners are sent on liberation to the department asylum of Nanterre. They are often transferred to the disciplinary batallions of Africa. A fourth *society is the* Société de patronage des libérés repentants, founded in

1876 and engaged especially with prisons for short sentences in the department of Seine et Oise.

While we find the director of the Maison Centrale of Poissy recognizing the services of four societies for discharged convicts, the director of the prison for women at Rennes complains that all his efforts have been in vain to establish an aid society for prisoners in that vicinity, owing to local causes. He recognizes, however, the services of the sisters of the order of Marie-Joseph. At Angeres, where there is a cellular prison for both sexes, the work of the aid society is gratefully recognized by the director. It is composed of magistrates. landlords, and of some rich manufacturers in that city.

The aid society of Lyons stands in close relation to the administration of the prison. An agent and also a committee of the society visit the prison and inquire into the condition of those who ask aid. This society extends its activities to all the penitentiary establishments in the southeastern part of France.

In Rouen a society was organized in 1874, which is one of the most active and vigorous in France. It comes into relation with prisoners before they are discharged. Its resources consist of subsidies by the State and the city of Rouen, of fees remitted to it by members of the jury, and of the earnings of prisoners committed to its care, amounting, all told, from 4,000 to 7,000 francs a year. There are other institutions, such as lodging houses, which do not confine themselves to aiding prisoners, but which have often prisoners among their beneficiaries. One of these lodging houses received in 1893 11,652 individuals, of whom 9,991 were men, 1,281 women, and 380 children. Another asylum on a private foundation has furnished nearly an equal amount of assistance. Still another society provides the needy with work, following a plan adopted generally in societies of this kind in France, of giving each individual some occupation for half a day which will entitle him to his daily bread and lodging. The other half of the day is devoted to the seeking of some regular employment. In the year 1893 9,756 days' work was furnished for 1,361 persons, and the amount dispensed in wages amounted to 10,208 francs. The resources of this society in 1893 amounted to 35,681 francs and its expenses to 19,185 francs. In connection with the agricultural colonies and institutions for minors there are nearly always aid societies and committees.

The Société pour le patronage des libérés has been mentioned. The report before me made for the general assembly in June this year gives an account of its work for the last year, including the admirable address of the president, M. Bérenger. The society was founded in 1870. "That which impresses one most," said the president, "in looking back over the past twenty-five years is the progress of ideas." When it was founded, but little was known about the patronage of prisoners, and that was met with incredulity and mockery. To these early doubts a confidence and an *eagerness have* succeeded whose results are seen

every day. The Government now gives important sums for this work and the chambers vote them without difficulty. For twenty-five years the society has patiently done its work. In its first year it assisted from 80 to 100 discharged prisoners and had an income of 8,000 or 10,000 francs and 200 members. To-day it assists 3,400 prisoners and has an income of 113,000 francs ($22,600) and 800 subscribers. In 1879 a temporary asylum was created. In 1881 it was decided to extend assistance to women, and a new asylum was established. A second asylum was established in 1890, especially for those liberated conditionally, and the number of assisted rose to 3,300. The total number of prisoners received from the beginning is exactly 33,028. The introduction of work into these asylums in 1891 helped prisoners and improved the finances of the society. Work has since been established in the house for women. The obligation to work is regarded as a great protection against the idle and hypocritical. A new rule imposes four days of work without wages in return for the shelter.

The introduction of work has reduced the expense from 35 francs to 17 francs 25 centimes for each prisoner, a reduction of 50 per cent. The figures for the last year show that 271 have been furnished with aid to return to their homes, 17 were reconciled with their families, 249 were enlisted as soldiers, 822 were placed at work, 170 were assisted without the asylum, 7 left the country, a total of 1,536. Of the income of the society 54,000 francs is received from the work of inmates, 54,000 from different subsidies, and 11,000 from subscribers. The association own two of its asylums, valued at 126,000 francs, with merchandise worth 15,000. This society is one of the finest examples of a living, active organization.

Another important organization is the society for the aid of Protestant discharged convicts. It was founded in 1869 by the Rev. E. Robin, who has written a work on the penitentiary question. Its receipts in 1894 were 6,590 francs; its expenses 5,875 francs. Since its organization in 1869 it has aided 3,678 prisoners. There is also a Protestant society working among women prisoners, which has a modest asylum. Its work is not numerically large, but earnest, personal, and sympathetic.

One of the most active of the labor homes is established at Melun. During the year 1894 it aided 1,246 inmates. Of these but 75 presented themselves a second time, 7 a third time. The majority stay from one to four days. This society receives and expends about 10,000 francs.

An important step was taken in 1893 for the union of all societies of patronage in France. The first congress of these societies for that object was held in Paris in 1893, and the second congress in Lyons in 1894. A permanent commission was formed and a central bureau established. The object of this bureau is not to interfere with the special work of each society, but to furnish a center for information *and mutual aid*. There are now 50 of these affiliated societies in

France. The central bureau is composed of 25 members elected for five years.

On this central committee are the names of distinguished lawyers, professors, judges, and philanthropists. The honorary presidents are the eminent senator, author, and member of the French Academy, Jules Simon, and M. Charles Petit of the court of cassation. The active president is Dr. Theodore Roussel, senator, member of the institute, and president of the superior council of public assistance; Messrs. Bérenger and Albert Rivière are on the central committee.

The Société générale des Prisons has for its object the study and development of all questions relating to penology, and has made a distinguished name for itself the world over among penologists. It has enlisted the cooperation of some of the most eminent of French jurists and philanthropists in the discussion of practical and fundamental questions. Its publications take the highest rank. It was my privilege during the session of the Prison Congress to attend on the 4th of July the dinner given in the Eiffel Tower by this society to the foreign delegates. The addresses on that occasion were marked by an earnestness, dignity, and sympathy, which were beautiful indications of the development of the humane sentiment not only in France, but throughout the world.

The national organization of these aid societies in France having been formed but two years ago, it is too early yet to seek practical results from this feature. But an interesting report by M. E. Cheysson shows just how such a central bureau may be useful. And it is interesting to note that as a result of the interest awakened by the formation of its national organization fifteen new societies were organized between May, 1893, and June, 1894, and some old societies have been revived. At the same time the Société générale pour le patronage des libérés has established ten new sections in different parts of France under advice of the central bureau. Thus the seed of a new interest in behalf of the prisoners has been sown everywhere in France and is bearing excellent fruit.

SPAIN.

When we turn to Spain, there is a decided contrast to the condition of things in France. Institutions of patronage do not exist distinctively for prisoners. They are more a matter of retrospect. There is evidence that some three hundred and fifty years ago Spanish nobility founded a society which concerned itself in securing justice for poor prisoners, obtaining pardon for their misdeeds, and giving them material aid. This society, founded in 1537, existed until 1649, one hundred and twelve years, at Seville. Other societies were founded in the last century and early in the present one. In 1840 the Sociedad Filantrópica was formed for the reformation of the prison system of Spain. It worked with activity and success until weakened and arrested by

political causes. Among its most distinguished members was Ramon Lasagra. One of the Spanish reporters to the Prison Congress says the patronage of prisoners in Spain seems to have completely fallen into forgetfulness. The prison system allows a reserve fund to the prisoner from his earnings, but no effort is made upon his release to supervise its expenditure.

AUSTRIA.

In Austria aid for discharged convicts has only lately begun to develop. Conditional liberation does not exist, but the system of allowing prisoners a portion of their earnings has been adopted. At the penitentiary at Marburg the amount of money due to prisoners on discharge averages from 5 to 7 florins ($2.50 to $3.50) a year. For the aid of worthy prisoners from this penitentiary there is a society, formed in 1891, under the presidency of its director. It has a membership extending over the Empire, the fee being 50 kreutzers a year—less than 50 cents. The mayor and the curé of each commune are counselors of the society. The membership is 561. In the three years following its organization, it procured work for 191 prisoners, reconciled 61 with their parents, bought railroad tickets for 247, and expended 1,600 florins ($800) for clothing and gifts. The investigation it has made in regard to those it has assisted shows that only 3.06 per cent have returned to crime, while where patronage has not been extended the recidivists reached 60 per cent. There is a fund for the aid of discharged prisoners, under control of the state, for the penitentiary at Marburg, which fund is at the disposition of the director. In the two prisons for women, that of Maria-Nostra and the prison of St. Maria Madelaine, the discharged receive a portion of their earnings, averaging about 5 florins ($2.50). Religious orders assist them on release. A legacy of 7,900 florins is devoted to the aid of female prisoners. The report says that the development of societies of patronage in Austria leaves much to be desired.

HUNGARY.

In the Kingdom of Hungary there are 20 voluntary organizations whose funds are augmented when necessary by the minister of justice. These societies are administered by persons without official relations. Where the assistance of the society is lacking, the royal attorney (procureur) is able to aid the discharged to the amount of 15 florins ($7.50) per man. In addition to this, the average amount available to the prisoner from his earnings on discharge is about 12 florins a year ($6). The penitentiary of Vaez has a special assistance fund, derived from the labor of prisoners. It amounts at present to 15,567 florins. The interest of the sum alone is used.

Three years ago in Hungary I visited personally the home for discharged prisoners established in the suburbs of Budapest, under the *auspices of* the Budapest Verein für Unterstützungen entlassener

Strafgefangenen. It was my privilege to meet the founder of this institution, Dr. Francis Scekely, a judge of the supreme court of justice, which is the highest court in Hungary. Dr. Scekely has not only established this home, but introduced a special industry, the making of straw covers for bottles, and in connection with a friend, invented a machine for their manufacture, so that Hungary no longer needs to import them, but is even able to export them. The institution is partly supported by the income from fines imposed by the code. Thirty per cent of this money in Budapest goes to the institution. It amounts to about 8,000 gulden. The society consists of 600 members. The institution has from 36 to 40 men, and occasionally 2 or 3 women, for whom there is a separate part of the house. This seemed to me to be one of the best labor homes I had seen, as one may see in Budapest one of the best jails in Europe. More satisfactory than the institution was the pleasure of finding an eminent judge in Hungary giving so much of his thought, time, and inspiration to aiding discharged convicts while acting as the honorary president of the society named.

SWEDEN.

Aid societies exist in all the principal departments of Sweden, and there is a central society at Stockholm. The prison population of Sweden is small, so that the work of the aid societies does not make a large show in statistics. Prisoners do not receive wages as such for work, but are given a premium for industry and good behavior, which does not exceed 9 cents a day. Half of this premium is available during the stay in prison; the remainder is deposited for him in the postal savings bank, and he is not allowed to touch it until after he has been a month out of prison.

DENMARK.

The same principle of allowing prisoners to accumulate a reserve from their earnings or money in the shape of a prize or gratuity prevails in Denmark. There are a number of aid societies, which have at Copenhagen a central organization, with an office and a paid agent. The inspector of the prison or the chaplain is usually the president of the local societies, and two or three other officers of the prison are members or directors. Assistance is given in the form of clothes, tools, railroad tickets, or orders for food. The society has been in existence for thirty-five years. Its revenues are mainly from private contributions, but the State treasury also gives aid. As little assistance as possible is given in money.

SWITZERLAND.

Switzerland is a country of less than 16,000 English square miles. It is little more than twice as large as Massachusetts and less than half the size of the State of Ohio. Yet Switzerland has fourteen societies for discharged *convicts.* The central committee of each society

has its office in the chief city of each Canton. It is interesting to note that in the Canton of Soleure a police department fulfills the work of a society of patronage and that at Bâl-campagne and also at Tessin the director of the penitentiary fulfills the discharge of this duty. The Swiss societies are each administered by a central committee chosen by the general assembly. In addition to this, several societies have a committee of women who care for women prisoners. Indeed, the members of the societies comprising a district or part of a Canton can constitute themselves a section, having a president at their head. Zurich is a Canton of 687 square miles, with a population of 284,000 inhabitants. It has a society with eleven such committees. One can thus see how fruitful in results may be the work of a society so thoroughly organized and whose committees and patrons work within a limited territory. Nowhere in the world, I suspect, is so much done toward bringing helpful patrons into direct personal relation with liberated prisoners as in Switzerland. The idea is that no prisoner shall really lack a patron. These district committees are composed of charitable men and women, well known in the place where they live for their devotion to those that suffer. They carry the spirit of philanthropy into the smallest borough.

Some societies, notably of the Neuchatel, replace these district committees by corresponding members who have the same duties. In an eloquent discourse, pronounced by Mr. Edouard Blache, on the patronage of discharged prisoners in Switzerland, which was delivered before a distinguished audience of judges, civil and military authorities in France, he called attention to the large number of societies which have at their head the director or the chaplain of a penitentiary, or some prison official, or a minister of some denomination. Such cooperation could not be found in every country, owing to political or religious divisions, but in Switzerland, an essentially democratic country until lately profoundly troubled by religious discussions, it is recognized by all that the patronage of prisoners is a neutral territory where men of all parties and of all social classes may be found. "Among us," said M. Lardy, "in that which relates to patronage, there are no more divisions of churches, parties, or social conditions; all are in agreement, and that has been the case for the last twenty-three years." "This union," says M. Blache, "of all the vital forces of the nation joined for the same effort is the main cause of the success of the Swiss societies of patronage." The number of members in these societies has been growing from year to year. That of Neuchatel, which began with 219 members, now numbers 1,800. To secure popular interest and support, the membership fee is placed very low.

The main work in each society falls upon the central committee, especially the delicate task of choosing among those prisoners who appear to be worthy of patronage and of designating a patron for them. The extension of aid is made, not through money, but through

work and personal sympathy, counsel and interest. This personal relation with the prisoner begins before he has left the prison. The society does not wait until some homeless or discouraged prisoner knocks at the door of its office. It goes to him as the father went to meet the prodigal son, while he is yet a great way off. Systematic visits are made to the prison. Every prisoner knows that he may apply for aid if he needs it and merits it. The director of the prison who, as already said, is a member of the committee, furnishes his colleagues with what they need to know concerning the character, the improvement, and sincerity of the prisoner. They learn his age, origin, profession; they know when he is coming out and what measures need to be taken in regard to him. Reports are carefully and formally made concerning the health of the prisoner, his special aptitude for work, his education, his weakness, the condition of his family, and the sum of money which he has earned. Instead of remitting the money to the prisoner, which in other countries has often proved a great temptation to waste and debauchery, the reserve due him is deposited in the savings bank and the book is generally given by the central committee to the patron who is chosen to be a friend, guide, and counselor to him. This direct individual and personal relationship which is established between the patron and his protégé is one of the most vital features of the Swiss system. No prisoner thus comes out friendless.

To this friend is committed the work of directing the prisoner in the right way, of continuing his moral education, and of following him until he is restored and rehabilitated. Personality thus has an immense place in the Swiss system. "Everything depends upon the choice of a patron," said the eminent president of the society at Neuchatel. "If prisoners have the fortune to find a good patron they nearly always reform." It is not always easy to find a man devoted and charitable and ready to sacrifice himself to this task. "Yet," says M. Blache, "we are able to cite examples of patrons in Switzerland who have guided with success a dozen and even fourteen discharged prisoners. The duties of the patron, his sphere and mode of action are described; his first mission is to seek for his protégé some place where at the moment of his liberation he may be able to gain an honest living. He must see that his protégé has a place, if possible, with a new environment, removed from the baleful influence to which he was exposed before. In France and elsewhere complaint has been made of that public hostility which often paralyzes the efforts of those who seek to find work for prisoners. "There is no lack," says M. Blache, "of sympathy for the prisoner who groans upon the damp straw of his dungeon, but when the condemned has paid his debt to society he often meets with nothing but disdain and contempt." The Swiss societies would long since have been wrecked had they not succeeded in diffusing among the masses more just ideas in regard to liberated prisoners and made the people understand that it is for their interest to associate

in this work. It can not be said that this hostility to discharged prisoners has totally disappeared in Switzerland, but it may be affirmed that the popularity of the societies in Switzerland, the confidence they have inspired, and the results they have obtained, render the task of their central committees or of the patrons much easier. If circumstances permit, the patron seeks at the very outset to reconcile the prisoner to his family and immediate friends. This is usually followed with the best result.

The Geneva society has established an asylum where prisoners are received on the day of their liberation for whom it has not been possible to find permanent employment. Provisional work is found for them through two societies for furnishing temporary employment. The society at Neuchatel has no asylum, and proceeds in a different manner to place its protégés. It establishes a list of corresponding members, and through a special employee paid for this work a list of persons in the canton who are disposed to give occupation to discharged convicts. This list contains all particulars in regard to the number of workmen, the number of apprentices, and the conditions imposed in each establishment. Contractors and employers willingly admit discharged prisoners in their establishments, for they are assured by a double guaranty; first, the surveillance of the patron, who is kindly if the prisoner behaves well, but in the case of disobedience or misconduct may impose a penalty; secondly, the engagement by the society to cover the cost of depredations of which it might be a victim through the employment of prisoners. But in twenty-three years the society has not had to expend a cent on this account. The development of patronage in workshops is dependent to some extent upon the reception which honest workmen accord to discharged prisoners. It is possible for them to make his life miserable by reproaches, but the law department of Neuchatel, in its desire to extend a support to the prisoners' aid societies, has decided that whoever malevolently and without sufficient excuse publicly reproaches a prisoner in regard to the act he has committed or the sentence he has incurred, shall be punished by imprisonment of a month or a fine of 100 francs.

The society avoids as much as possible giving indiscriminate aid; but it is often necessary to provide a prisoner with clothes, overalls, or tools, before he can get work. At Neuchatel the care of making the necessary purchases is devolved upon the patron.

When a patron has found a place for a discharged prisoner, his work is far from finished. In the Canton of Neuchatel patronage involves two distinct elements. The patron gives his protection and aid to the prisoner intrusted to him. He stimulates his zeal by giving him from time to time a part or the whole of his accumulations in prison. On the other hand, the prisoner is submitted to a surveillance which is very different from the surveillance of the police. Its duration is decided by the central committee upon the report of the patron. The

patron presents each year a circumstantial report upon the result of his activity. Formerly, the only penalty which a discharged prisoner incurred for insubordination or misconduct was the withdrawal of aid; but since 1892 the council of the Canton of Neuchatel, by an amendment to the penal code, enables the committee of the society to complain of an insubordinate prisoner before the proper authorities and to inflict a punishment whose maximum is fixed at three days' imprisonment. This power is used with great discretion, so as not to alienate the objects of aid. This surveillance is not only extended to those who have voluntarily placed themselves under the patronage of the society, but the penal law now intrusts to the society the surveillance for a period of five years or more of every prisoner less than 18 years of age. He is obliged to conform to the injunctions of his patron and of the committee, under a penalty of being sent again to prison for a period not exceeding six months. The society also cares for minors who have been acquitted as irresponsible, but who need to be placed in some house of correction or discipline.

It is thus seen that the society acts in close relationship with the State, although its activities depend almost wholly upon private interest and devotion. The State not only gives moral support, but aids by subsidy.

The practical result of this system is seen in the reduction of the number both of prisoners and of recidivists. In the Canton of Neuchatel there has been a reduction of 50 per cent in the number of prisoners. The recidivists, which in 1870 were in a proportion of 75 per cent, were in 1892 only 4 per cent. In the Cantons of Switzerland which are deprived of these aid societies, recidivism still works its ravages. In 1890, of 225 prisoners assisted by the Neuchatel society, only 6 have fallen. In 1891, of 264 discharged prisoners aided, 10 have been reconvicted. In 1892, of 360 aided, 15 have fallen. In the society of the Canton of Geneva, of 496 condemned men whom it has aided, but 17 had received new condemnations. M. Blache believes that a part of these results must be credited to the excellent penitentiary system of Switzerland. It is a system of at first solitary cellular confinement, then progressive life in common, and afterwards conditional liberation.

Since 1888 there has been a union of the different societies in Switzerland, with a central organization, without sacrificing the individual character or autonomy of each society. This union has been fruitful in practical results.

No man in Switzerland has done more for the development of the penal system of that country than Dr. Guillaume, director of the federal office of statistics and general secretary of the Commission of the International Prison Congress, and to him I am indebted for many facts and reports in relation to aid for discharged prisoners.

ENGLAND.

In England, according to the report of the prison commissioners, there are some ninety prisoners' aid societies. In preparation for the Paris Congress, Mr. E. Ruggles-Brise, commissioner of prisons and the official delegate to the Paris Prison Congress, sent a series of special inquiries to every aid society in connection with the prisons, asking for definite information. Through the personal kindness of Mr. Ruggles-Brise, I had the opportunity at the home office of looking over the large amount of information thus acquired. The paper by Mr. E. Ruggles-Brise, written as a result of this examination, was a valuable contribution to the preliminary reports of the Congress.

Among the answers received from these societies, that of the governor of Stafford prison furnishes one of the best examples of the English method. Two societies are connected with this prison, the North Staffordshire and the South Staffordshire aid societies. In addition, the Litchfield Labor Home, the County Police Mission, and some various female rescue and preventive homes cooperate with the societies mentioned. The names of all prisoners selected for inquiry are every week submitted to the governor, who is a member of the executive committee of both societies. The governor, at his discretion, reduces or adds to the list. The societies take charge of and expend through paid agents all prisoners mark money. The chaplain is secretary to the two societies. In conjunction with the governor he selects places for the agents to see and inquire into. The agents are under his authority, and he is responsible to his executive committee, to whom he submits a monthly balance sheet, giving full details of all the work done in every way. Under the English system the law provides for a visiting committee for each prison, which is made up mainly of magistrates. Its members are nearly all subscribers to these societies and several belong to the executive committees. The agents are paid a fixed salary and expenses. Especial attention is paid to female prisoners. Ladies' committees exist in almost any town in the county. The fundamental rule is "No money aid." Clothes, tools, food, etc., are purchased and lodgings provided while work is being found. The prisoners' gratuities are paid by the societies.

The society does not profess to deal with habitual criminals beyond taking charge of their mark money and doing their best to find work for them. The societies do their utmost for first offenders and for prisoners with one or two convictions. There is a labor home for female prisoners. The chaplain, though favoring a home for female prisoners, does not regard a labor home for men as a form of aiding discharged convicts that it would be well to resort to frequently. Four thousand one hundred and eighty-nine prisoners were discharged from Stafford in 1893. Twenty per cent of this number came before the agents of the *two societies*. Pecuniary assistance, not cash, was given to 400; work

was found for 223. Less than 10 per cent of the men and women dealt with by the two societies have been recommitted to prison.

The various prisoners' aid societies of England, of which 67 are reported—and there are about 90 in Great Britain—illustrate one important advantage secured by their multiplication and cooperation. They become centers for the education of public opinion concerning all questions of prison reform. The English societies bring to bear upon Parliament and upon the Government the force of their influence to secure better methods and better legislation. Thus, in 1893, a congress of the various prisoners' aid societies in England was convened in London, to which 50 societies sent deputies. At this conference resolutions were passed recommending amended legislation for habitual drunkards, raising the question of gratuity to ticket-of-leave men, and urging the non-imprisonment of children. The committee of the North Staffordshire society say:

> Your committee have for some years lamented the isolated conditions under which the various societies have hitherto been content to work. Apart from the intrinsic value of the four reforms above specified, we attach paramount importance to that fast-growing spirit of cooperation, combination, and free interchange of experience by which they have been brought within the range of practical possibilities.

In the valuable report of Mr. E. Ruggles-Brise already referred to, the essential elements of the treatment of discharged convicts are described and the work that is done by the aid societies, the temporary homes, and the Salvation Army is warmly recognized. In England the prisoner does not receive a portion of his earnings as such, but receives certain gratuities. On his discharge from a local prison—that is to say, a prison in which the sentences are of short duration, from one day to two years—he may receive not more than 10 shillings. On leaving a convict prison where the sentences vary from three years to life the highest amount available to him is £6. Above a certain minimum sum, the aid societies take charge of the gratuities for the prisoner. The Government also gives certain sums to these societies. The amount given has generally been based on the requirement that private donations should reach an equal amount, or that the subsidy given by the Government should be limited by the amount received from other sources. "The principal difficulty," says Mr. Ruggles-Brise, "which retards the work of the reformer is the shortness of sentences. More than half of the sentences are for less than fifteen days. Thirty-eight per cent are condemned to a week or less. Thirteen per cent only remain prisoners long enough to obtain a gratuity on their discharge. Thus, in the case of the great majority of prisoners they have very little if any occasion to exercise their beneficent influence. In spite of this the prisoners' aid societies are in communication with nearly all the prisons throughout the United Kingdom and are doing an immense amount of good. The energy, zeal, and devotion excited by that special form of charity *from one end of the Kingdom* to the other are truly admirable."

Agents are employed to-day in most all prisons; in some, two agents are employed, one for the male and one for the female prisoners.

No question in England, we are told, has given rise to so much diversity of opinion as that relating to the establishment of temporary homes for men. In general, in England, public opinion is against the adoption of such a system. On the Continent it is more favorable to these establishments. Mr. Ruggles-Brise doubts if the opinion common in England is correct. But little has been done in this direction in England during the last twenty years. Canon Jacobs, of Portsmouth, believes strongly in labor homes, and says, "Our missionaries rarely fail to find work for those who have passed through the labor home and are benefited by it." Mr. Ruggles-Brise is of the opinion that every prison ought to have a labor home in connection with it. Some prisons take advantage of the homes or shelters established by the Salvation Army, which do a great amount of good. As for refuges for women, public opinion is practically unanimous in their favor. Semi-official refuges for women have obtained excellent results. They are applied to long-sentence convicts, not to local prisons. Generally speaking, they depend upon conditional liberation after the expiration of a third of the sentence, with power to recommit the prisoner in case of misconduct.

In England the curious are strictly excluded, but every facility is offered to persons properly accredited and recognized whose object is the well-being of a prisoner.

OTHER COUNTRIES.

Prisoners' aid societies also exist in Germany, Belgium, Holland, Italy, and Russia. The Duchy of Baden alone has 59 district committees, grouped under the direction of a central committee. The custom of giving prisoners gratuities or a portion of their earnings as a reserve fund against discharge, prevails in nearly all European countries, and it even extends to Japan, where conditional liberation has also been introduced.

ACTION OF THE FIFTH INTERNATIONAL CONGRESS.

So far as the discharged prisoner is concerned, discussion at the Fifth International Prison Congress centered in the question, What means should be taken to prevent discharged prisoners from wasting their accumulation on leaving prison, and thus falling again into crime? The action on this subject is given in the report of the third section.

CONCLUSIONS.

From this wide survey of European methods, what conclusions may be drawn in regard to our own country?

(1) The weight of evidence shows that in the countries and districts where aid for discharged prisoners is most actively and efficiently *organized* there has been a marked decrease in the percentage of *recommitments* to prison.

(2) Where aid for prisoners is most sufficiently organized, we find also an improved prison system and a due attention to preventive agencies. One can not take hold of one end of this prison problem earnestly without being obliged to take hold of the other. It was the Prisoners' Aid Society at Baltimore that discovered that a children's aid society was needed. As we have seen, the prisoners' aid societies in England are earnestly advocating preventive measures.

(3) In England, France, Switzerland, and in some other countries, prisoners' aid societies are vastly more numerous and active than in the United States. For the most part they are officially recognized and aided by Government funds, and their work is carried on in cooperation with prison officials. The question rises whether we should not have prison associations in every State of the Union, with committees or district societies in every county or wherever there is a prison.

The opposition of many wardens in this country to such societies may be attributed to the unbusinesslike and unpractical manner in which such organizations have worked, though as a matter of fact there are so few societies in active existence in this country that few wardens have had much experience with them. If societies in this country like those in Switzerland and in England were brought into close relation with the wardens and claplains of prisons, they would gain by the practical wisdom and experience which prison officials have acquired.

(4) We can not separate the proper treatment of discharged convicts from the large question of prison administration. When a man returns to prison a second or third time it may be because when he went out he was not properly educated to go back into society, or it may be because society was not properly educated to receive him. Those who have to deal with discharged convicts know the difference in dealing with a prisoner who has come from a house of correction and one who comes from Reformatory. If one has learned a trade, or has had the manual education which lies at the basis of all trades, it is not so difficult to place him. But if one comes out of prison without education, it is hard to tell which is more helpless, the prisoner who asks for aid or the man who would like to aid him.

On the other hand, let us not make the mistake of assuming that the best prison system and the best prison officers can wholly decide the fate of the discharged convict if society is hostile and apathetic toward him. The work that is done within prison must be supplemented by sympathetic and helpful work when the prisoner comes out.

(5) In regard to the establishment of labor homes, the writer, while admitting their practical usefulness in certain places and under wise management, believes that when the indeterminate sentence, or some wise form of conditional liberation is universally adopted, there will be little if any need of such labor homes for discharged prisoners. The prison can shelter them until they are reasonably assured of work outside.

(6) Of all the systems and methods examined, none seems so wise, so fruitful, and so promising as the Swiss system, in which every prisoner not a confirmed recidivist may have a patron who shall be to him a guardian and friend. Nothing can take the place of that form of practical Christianity which the Apostle Peter illustrated when he said "Silver and gold have I none," but gave his right hand to the man at the gate. It is not money, but the right hand extended through the probation system which many a convict needs when he stands in the court of justice, it is the right hand of education and discipline which he needs in prison; and it is the right hand of friendship, sympathy, and fraternity which he needs when he passes once more from prison into the great, wide world.

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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 182.

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1896.—Ordered to be printed.

Mr. BERRY presented the following

ARGUMENT MADE BY JUDGE M'KENNON BEFORE THE COMMITTEE ON INDIAN AFFAIRS OF THE HOUSE OF REPRESENTATIVES, RELATIVE TO CONDITION OF AFFAIRS IN THE INDIAN TERRITORY, TOGETHER WITH OTHER PAPERS, AND SENATE DOCUMENT NO. 12, REPORT OF THE COMMISSION APPOINTED TO NEGOTIATE WITH THE FIVE CIVILIZED TRIBES OF INDIANS, KNOWN AS THE "DAWES COMMISSION."

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INDIAN AFFAIRS,
Wednesday, March 11, 1896.

The committee met at 10.30 o'clock a. m., there being present: Mr. Sherman (chairman), and Messrs. Curtis, Doolittle, Fischer, Eddy, White, Stewart, Hyde, Maddox, Little, Pendleton, and Flynn.

The members of the Commission to the Five Civilized Tribes and others were also present.

Mr. DAWES. Mr. Chairman, it is the wish of the Commission, if agreeable to the committee, that my colleague, Mr. McKennon, may occupy the remainder of the time allotted by this committee to the Commission.

The CHAIRMAN. Senator Dawes, there has been no fixed time allotted to the Commission. We want you to have unlimited time to present to us every possible phase of the question that you think we ought to understand.

Mr. DAWES. We desire to have Mr. McKennon listened to this morning, if that be agreeable to the committee.

The CHAIRMAN. Certainly.

STATEMENT OF HON. A. S. M'KENNON.

Mr. MCKENNON. Mr. Chairman and gentlemen of the committee, you certainly have been very patient in the hearing of this question, as it is meet and proper you should be upon a question of so much importance to the country, and especially to the people of the Indian Territory who are directly concerned. I shall consume as little time as possible, though it will necessarily take some time to go over the ground which I desire to present for the consideration of the committee. We are here, as you know, simply to serve you; we have been brought here for that purpose, and we are at your service. We have

no other business on hand except to give such information to the committee as we may be able.

This is a matter that has attracted considerable attention for several years. It is nothing new. We find that in 1889 a committee was sent to the Territory to investigate affairs there. There must have been some reason for that committee going there. If everything had been regarded as in a perfectly safe condition, I apprehend that Congress would not have gone to the trouble of sending a committee there. That committee was headed by a then member of the House of Representatives, now one of the judges in that Territory, Hon. William M. Springer. Mr. Mansur, Mr. Perkins, Mr. Peters, and Mr. Allen were also members of it. I do not now remember who the other members were, if there were others. When they returned the chairman of that committee introduced a bill providing for statehood in that Territory. I shall leave a copy of that bill with the committee for its use, simply calling attention to it.

Mr. FISCHER. What is the number of that bill?

Mr. MCKENNON. It is the bill H. R. 224, Fifty-first Congress, first session.

Afterwards, in 1892, another committee was sent down there—that was in the first session of the Fifty-second Congress. The chairman of that committee was Senator Butler, and Mr. Perkins, and Mr. Higgins were his associates. When they returned Mr. Perkins introduced a court bill for the purpose of regulating affairs in that Territory.

Mr. FISCHER. What is the number of that bill?

Mr. MCKENNON. That was Senate bill 2924 of the Fifty-second Congress, first session.

In 1894 a bill was introduced by Mr. Higgins in regard to the intruder question. I desire to call attention to that. It is Senate bill No. 1850, Fifty-third Congress, second session.

I merely call attention to these in order to show you the interest that has been manifested in this question.

In 1893 Congress passed a bill for the creation of a commission to negotiate with the Five Civilized Tribes. Hon. Henry L. Dawes, Major Kidd, and I were appointed the members of that commission; Senator Dawes was made chairman of it. We went to the Territory about January 10, 1894.

Afterwards, during that year, a Senate committee, composed of Senators Teller, Platt, and Roach, came to the Territory to investigate matters, and on their return Senator Teller made a report (Senate Report No. 377). Gentlemen of the committee, I invite your especial attention to this report, because it is in the line of the report which we afterwards made, in substance the same, reporting the same condition of affairs that we found to exist in that Territory. I hope that every member of this committee will read that report. I will not undertake to go over the whole of it; you can read it for yourselves. That report stated conditions that were startling. The Congress of the United States had not been made acquainted with the condition of affairs existing in the Territory prior to that time, and I say that it was a startling report when it was made to the Senate of the United States. That report undertakes to review the situation, and in conclusion states in substance that the only thing that can be done is to wipe out the existing governments in the Territory, and put in lieu thereof a government capable of controlling affairs and taking care of the lives of the people. I do not undertake to quote the exact language, but that is the substance of it.

I have another report here, made by Senator Morgan (Senate Report No. 281, Fifty-second Congress, first session). It undertakes to review the whole question. I need not call your attention to the character of the man who took that matter in hand. You know him; you know his ability to investigate a question like that and to determine what ought to be done. I assert, in calling attention to that report, that it will give you more information than almost any other document that can be presented to you, as to the real condition of affairs in that Territory, and what may be necessary to regulate conditions there.

Before going to the Territory, the honorable chairman of this Commission gave notice to the heads of the various Indian governments that we were going to the Territory, and that when there we should be glad to confer with them, and asked that committees be appointed to confer with us.

Just after we went there the Cherokee council, then in session, authorized the chief of that tribe to appoint a committee to meet us, but in the resolution for that purpose expressly prohibited such committee from doing anything except to throw every possible obstruction in our way in order to prevent us from accomplishing the purposes of our mission. That committee came before us, and it was in that conference that the full-blood declared himself in the manner in which Senator Dawes stated the other day. After others had made their talks to the Commission he was called upon, and, through an interpreter, said he was opposed to any kind of a change there, but there was one thing he did not understand, and that was that while he had only a few acres of land others had boundless possessions and many acres. He could not understand that. He said he understood that the lands were to be held in common, but here was one feature he did not understand. Nothing, of course, was accomplished then.

But immediately afterwards Chief Harris called an international convention, which met at Checotah, in the Creek Nation, and there it was agreed that nothing should be done by any tribe, touching a change, without the cooperation of all the tribes; that no concessions would be made, and that nothing should be done in regard to the work we had in hand.

We had conferences after that with the other tribes in that Territory in which we laid this matter before them as pleasantly and as kindly as we could.

Mr. MADDOX. About what time was that?

Mr. MCKENNON. It was about the 21st of February.

Mr. MADDOX. Of last year?

Mr. MCKENNON. Of 1894. That was when the first Commission was down there.

Mr. MADDOX. Was that before you had had any consultations with the other tribes?

Mr. MCKENNON. We had visited and addressed the Choctaw council and had had conferences with the Creeks and with the Cherokees. At that time we had had no conference with the Chickasaws or Seminoles.

Mr. PENDLETON. Did you go to the capitals of those tribes?

Mr. MCKENNON. Yes; we first visited and addressed the Choctaw council; afterwards we addressed the Chickasaw council, then the Seminole council. At the request of the chief of the Creek Nation we went to their capital and addressed 1,500 or 2,000 Indians, laying this matter before them as clearly as we could, to which I shall hereafter refer.

During that year we visited the Cherokee capital, and at the request of those people we visited and addressed the nominating conventions of the two political parties there, the Downing party and the National party.

Mr. MADDOX. Before you leave that subject I want to suggest to you that Mr. Hastings, I believe it was, the other day in his argument here complained of the fact that you had not visited the Cherokees.

Mr. CURTIS. That was the second time, not the first time.

Mr. MADDOX. Perhaps, however, Mr. McKennon should be allowed to proceed with his statement in his own order, and we can ask him questions afterwards.

Mr. MCKENNON. I shall refer to that before I get through.

I understand that it has been claimed that we were unfriendly; that we went there with unfriendly feelings. We had our instructions, which this committee can see if they desire. Besides, the Secretary of the Interior had said to us: "You are going down there in the interest of the Indians; you are charged with the work of placing those people, if they negotiate with you, in the very best possible condition, in order that they may become good citizens of the United States and enjoy the property which belongs to them." We ourselves went there in that kind of a spirit. The President had also made some such remark to us. We commenced to consider the matter in this way: This country belongs to these people, every foot of it; not an inch of it belongs to a white man within these Territorial lines. If that be the case, then the Indian ought to enjoy his property—ought to govern the country. And the first proposition we made to these people, the first time we addressed them, was to establish an Indian government in which no one but the Indian and his descendants should have the right to vote, unless that right was conferred by the legislature. The legislature would, of course, be composed of Indians, and they would have had their affairs in their own hands. We were not then informed of the exact condition of affairs there as we are now or we would not have made any such proposition. I say this to show our friendly spirit—the interest we felt in them. This Commission never had other than a friendly interest for the common people of that country, and I now think we are the only persons here representing the common people there. And I can make this manifest before I get through.

When we found that we could do nothing with the tribal governments there, and when this international convention had forestalled any action upon their part, we then opened our doors to everyone. It was a new thing, and all the people in that Territory were much interested—the citizen and the noncitizen, the Indian and the white man; every kind of resident was interested, and we opened our doors to all, and they came and talked with us. We shut our doors against no one, no matter whether red or white or black. In that way we obtained information from all classes and conditions of the people. But I will not address myself to that any further just now.

I think I can show conclusively to the committee that the conditions in that Territory have not been exaggerated by the report of the Commission. We have said something about the corruptions of the national governments there, which has been questioned.

When we visited the convention of the National party we found the Indians encamped by a spring in the woods. That is their manner of holding conventions. They camp in the woods by a spring for a week or so—hold a kind of love feast—and make their nominations. We

addressed the people as pleasantly as we could. We have always talked to them pleasantly. No one can come from that Territory and truthfully assert that I ever uttered an unkind word against any of them, either privately or publicly, since I went there. I presented these matters just as kindly as I possibly could. Afterwards Mr. Boudinot came to me with others, several councilmen, six or eight I will say, and said to me: "The reasons you give do not seem to me to be sufficient for the Government of the United States interposing or intermeddling with our affairs here. Have you any other reason to give?"

I said to him: "Colonel Boudinot, this is a kind of love feast of your people and I have refrained from mentioning anything here to-day that I thought would be unpleasant to you gentlemen."

"Well," he said, "we insist upon it. Have you any other reasons? If so, we would like to know what they are."

I then said: "I think the corruptions existing in these governments not only warrant the Government of the United States in laying its hand upon affairs here, but I think they absolutely require the interposition of the United States Government for the protection of the common people."

"Well," he said, "will you please just mention some particular matter of corruption?"

"Yes," I said, "I will do that. It was made the duty of your national council to locate the payments of the Strip money in such places as would be most convenient to the people." That was the duty imposed upon them. They were paid for their services, and it was their duty to have done so willingly and cheerfully, and they should have sought nothing but the convenience of their people. Instead of that, however, they required the town of Vinita to pay them $2,500 before they would locate a payment there. I said: "Major Kidd was in that town at the time that money was being raised, and it was asserted that the council would not locate a payment there if they did not raise that sum."

Mr. MADDOX. As I understand, the idea was that they would not pay off there unless they received that money?

Mr. MCKENNON. They would not locate any payments to be made at that town unless the town paid them that much money.

Mr. MADDOX. They attempted to compel that sum to be paid to them?

Mr. MCKENNON. Yes. Whether that much was paid or not I do not know, but a large sum was paid to the members of the council.

He asked: "What else?"

I said: "That council bled the citizens of the capital of your nation just as long as they could get a quarter of a dollar out of them, and would not locate a payment there unless they were paid."

He said: "Oh, well, your legislatures and your Congress are just as corrupt as our legislature. They would have done the same thing."

I said: "No, Colonel, that is not true. That is the only reply any of you make to these charges of corruption. It is not true, and does no credit to the people who make that charge." Then I undertook to show that the legislature of Arkansas was not corrupt, and told him that I judged the legislatures of other States by that of my own State. I then said: "So far as the Congressmen from the State of Arkansas are concerned, I have this to say: I know them personally, and if you were to make such a proposition to any one of them it would never be made but once, and I judge the Congressmen from other States by those from my own State, and, judging them that way, I say your statement is not correct and does no credit to your people." Now, sir, he made

no denial of those charges, and I do not suppose they could be denied by anyone. I will now read a petition which I have, and which I was requested to use here for the benefit of those who have signed it:

Petition to the honorable council of the Cherokee Nation.

We, the undersigned citizens, beg leave to call your attention to the deplorable and unsatisfactory condition of our public domain, with which you are familiar, and ask that you enact such law or laws as will correct this condition. A portion of our citizens, through the connivance and financial assistance of noncitizens, have managed to monopolize our entire public domain under various pretenses of law. Thousands of our citizens are to-day without homes—

Five hundred and twenty men say that, Mr. Chairman.

Mr. MADDOX. Cherokee citizens?

Mr. MCKENNON. Yes; Cherokee citizens and Indians, Indians entitled to all the rights belonging to Cherokee citizens—

and there is no land left upon which they can make homes. Our entire country is wired in, and anyone desiring to travel across the country a few miles is necessarily forced to go, in many instances, 10 miles around in order to reach a place only 3 or 4 miles away. In most places in the nation the noncitizens on land claims outnumber the citizens. West of Grand River, in Cooweescoowee and Delaware districts, it is the exception to the rule to find a citizen on a claim; the noncitizens will outnumber them 100 to 1. There is nothing thought of one man in this portion of country claiming from five to twenty farms. And in most instances these farms perhaps consist of 10 acres in cultivation, and from 1,000 to 5,000 acres in grass land, for hay to cut and ship out of the country for speculation. These noncitizens claim to be leasing this land from citizens. And in most instances when a noncitizen once gets to be a leaseholder he then commences to lease to other noncitizens on his own account. Hundreds of leases are held by noncitizens, emanating from another noncitizen. Thus our entire public domain is absorbed, and they even go so far as to sell the unfenced quarter for hay purposes, for shipment. This condition of affairs has been productive of a great hardship to a large portion of our citizens; they realize that they are entirely deprived of homes and privileges in the public domain, while the few citizens, together with noncitizens, are monopolizing all of their rights. Even hay and wood are denied them.

Heretofore we have endeavored through our counsellors and senators to obtain relief, but so far these land monopolists have been able to thwart us in our design, and with money have defeated us in this, our right. We are perfectly aware of the fact that these transactions with noncitizens are without the semblance of law to protect them under this Government. And the courts of the United States in this Territory have decided that they have no status under the Arkansas statutes. The Interior Department has long since decided that even our council had no right to lease land. And surely such a right can not be delegated to a citizen.

In view of all these things we, as law-abiding citizens, once more ask for relief at your hands. We view our own council as the proper place to make our wants known and obtain redress for our wrongs. And we trust that our appeal will not be in vain.

We are fully determined to have redress. We can no longer suffer our rights and the rights of our families to be trampled upon by monopolists and ignored by our officers. We ask you for relief once more, and trust you will not ignore our request. We would regret very much to be driven to the necessity of appealing to the United States Government for relief, but the duty we owe ourselves, our wives, and children, will impel us to this course as a last resort to obtain our rights. We ask your consideration of this subject at this assembling of council, and if not complied with this petition will surely be forwarded to the Congress of the United States, asking them for the relief our own government has steadily refused us.

We, your petitioners, will ever pray.

Mr. Chairman, that is signed by about 520 citizens, a number of them being adopted citizens. I have not counted to see what portion of them are adopted, but I will file this with you and you will see that there are not more than about one out of four or five who are adopted citizens. The others are Indian citizens by blood, and they are here to testify with reference to the condition of affairs obtaining in that *Territory.* When we were here a year ago it was roundly denied that *there was* anything like land monoply in the Cherokee Nation. This

petition was gotten up, was presented to the council, and was referred to a committee, but no action has ever been taken of which we have any knowledge. At all events, nothing has been done. The party who had that petition circulated sent it to me, requesting me to use it to the best advantage, and I do as he requested. I will add that it is signed by a brother of Chief Harris, who is here, and is also signed by several members of the national council (senators and representatives) and one of the circuit judges of that country. It has been the fashion to deny everything, and to say that those who controvert the propositions made by the delegates here are not citizens; that they do not amount to anything; that they are pestiferous fellows. But here are 520 or more citizens of that country who tell you that that condition of affairs exists there, and they say that their prayers for relief have heretofore been defeated at that council by the use of money.

I will present another statement. I will read an extract from the fourth annual message of Principal Chief J. B. Mayes, of November 4, 1890, to the Cherokee council, referring to the absorption of the public lands by citizens:

Large wealth is being accumulated in tilling the soil, so much so that our valuable lands will soon be taken up and put in cultivation, thereby making permanent and happy homes. Hence this important question presses itself upon your consideration. The strong, energetic, and wealthy class of our citizens will naturally get possession of our rich lands and monopolize the use of the same. Our forefathers, in the formation of this government, wisely looked to this day, and ingrafted in the constitution a provision by which this monopoly could be restrained. At this time this monopoly has grown to be an evil and demands your immediate action. The information I have from many parts of the country is that individuals have become so infatuated with the accumulation of improvements that single persons claim as many as thirty farms.

Mr. LITTLE. That was in 1890?

Mr. MCKENNON. Yes, sir.

Mr. LITTLE. Is that J. B. Mayes a brother to the chief, S. H. Mayes?

Mr. MCKENNON. I do not know what relation he is to the present chief, but I wanted to read this extract in order that you may understand the magnitude of this land monopoly. The laws there give to every man land to the depth of a quarter of a mile immediately around his premises. If each of these farms consists of only 40 acres, you can see that 30 farms controlled by one man would embrace many thousands of acres and militate largely against the interests of the common people of that country. He says further:

The country in some sections is literally fenced up without a passway. While you should encourage every citizen to make and own good farms and become large tillers of the soil, there should certainly be a limit to this greed. You should teach the people that everyone has an equal interest in our common country; and when they properly understand and fully appreciate this family government and estate they will then know that a few citizens can not fence up and own the entire country. The way in which this monopoly is carried on is by our citizens entering into pretended leases of the land to noncitizens for a number of years, which is a plain violation of the law of this nation. The citizen is to get all the improvements after the noncitizen gets the use of the land, and in many instances after the land is nearly worn out. The citizen as a general thing has never invested a dollar in this transaction. I am also informed that a land-office business is being carried on between noncitizens in buying and selling leases. You can at once see the great evil and danger that will be entailed on this country by this unscrupulous action of our own citizens. I am of the opinion that you are justified in resorting to extreme measures to relieve our country of this curse.

While I have not the documents at hand to support it, I am informed, and I think credibly informed, that every other chief from that time on has called the attention of the council to this condition of affairs, but not a thing has been *done, and* these petitioners tell you why.

I will give you a list of some of these parties who hold lands, and the amount of lands they hold. Of course these are estimates, but they are approximately correct.

Mr. LITTLE. You are speaking of the Cherokee Nation?

Mr. MCKENNON. Yes; of the Cherokee Nation, according to the order of my argument. I shall next take up the Creek Nation. Here is the list:

	Acres.
F. Wasson	15,000
M. Holderman	8,000
William Nobles	12,000
Albert Morris	4,000
A. Mills	8,000
William Howell	10,000
George Warren	5,000
John Warren	5,000
W. C. Patton	5,000
William Halsel	20,000
J. H. Partles	10,000
James Martin	10,000
Robert Owens	10,000
P. B. Kennison	3,000
Clarence Turner	10,000
John Crutchfield	8,000
M. N. Couch	5,000
C. V. Rogers	5,000
Johnson & Keeler	8,000
L. W. Buffington	2,000
G. W. Green	4,000
S. S. Cobb	5,000
Dan Bachtel	2,000

Mr. Chairman, here are twenty-three persons holding 174,000 acres of land. Let me tell you where. These lands are held mostly in the western portion of that country, and the western portion embraces almost all the tillable land, or is at least the best portion of the Cherokee Nation. The eastern portion is broken and not so valuable as the land in the western portion; it is a beautiful and rich country. And these farms are mostly located upon that land.

In the reply of the Cherokee delegates here to the report of the Dawes Commission they state that it will be found that there are not more than 40 acres of good tillable land to each citizen of the nation. If that be true, then these twenty-three persons hold (because these farms are the good land of the country) the shares of about 4,350 people of that tribe—about one-seventh of the entire citizenship of the tribe. This is only a partial list, and I am informed, by reliable gentlemen who have written to me since I came to this city, that there are numbers of others holding from 500 to 2,500 acres of land in that country. This William Halsel is said to hold about 30 farms, and if that is so, he holds them in violation of the rights of the common people of that country, as much so as if one citizen of the State of Arkansas should hold that much land belonging to other individuals and they powerless to recover it.

Mr. LITTLE. Who is Mr. Halsel?

Mr. MCKENNON. He is a white man who first married an Indian woman, who died, and he then married a white woman, as I am informed.

Now, let me read again. A correspondent at Pryor Creek, Ind. T., in reporting a picnic that occurred at that place, gives one of the speeches made, in which a full-blooded Cherokee, Rev. Henry Cloud, spoke in favor of allotment. The speech is full of good, hard sense, as reproduced. Here is a full-blooded Cherokee talking. I insist that the

poorest full-blood or half-breed of that country, or any other kind of a citizen, has the same right to speak to this committee as any other man, no matter how high his position or how much wealth he has obtained at the expense of the common people. This full-blood, speaking to you to-day, says:

I am a native-born Cherokee Indian. I love God and my people, and when I look over the present situation my heart is pained, for decay is stamped on every phase of our government. Her institutions, in the main, are mammoth farces. Lands in common has long since ceased to be a reality. It is now almost impossible for a young, enterprising Cherokee to find a desirable location to make himself a home without purchasing a right from his rich brother to locate upon his almost boundless premises. My brothers, this ought not to be so. We want homes for all of our Cherokee boys and girls—which means allotment. It is coming, let us prepare for it.

Allotment is the only remedy to prevent ruin. I want every Cherokee by blood to have just and equal rights, for I know that if I were ostracized by my people I would contend with all my ability to be restored and reinstated to what might be my rights and immunities as a Cherokee Indian, and I don't blame those who have been rejected and turned away by prejudice—

This is a Cherokee Indian talking to us. They say our report is wrong when we say that has been done. This man talks with all the power and force of any other man who has addressed this committee—

I don't blame those who have been rejeted and turned away by prejudice and injustice for contending for what they conceive to be their rights as a part of this great family. Let us do unto them as we would have them do unto us were matters reversed.

Here is a letter received only a few days ago by the chairman of this Commission:

TAHLEQUAH, I. T., *March 1, 1896.*

Senator DAWES, *Washington, D. C.*

SIR: As I am knocking around in the Creek and Cherokee nations, and am well acquainted in both nations—raised in the Cherokee Nation—and am one of your red men you speak of a short time ago, I noticed a bill which you blocked out, for the purpose of putting before Congress, which pleased two-thirds of the Indians, but made our middle men, and cream drinkers, and office holders, and pasture holders look a little serious, and they then began to rustle around among themselves and cattle holders to get money to put up big salaries to get delegates to Washington to veto your entire labor. But stay with them. I understand that the Cherokee delegates got $5,000 apiece. I don't know what the Creek delegates got. What good are those delegates doing the poor Indians, gobbling up their lands and money? We are afraid to come out and express our feelings. But I will tell you we want our land and our money if we have got any. They are continually draining us of both. The only objection I have ever heard any of them make, is they think you ought to have put an Indian on the committee to decide whom their citizens should be. So I will close. I remain a friend and look for you soon. Don't let this Congress pass without doing something. If you do they will clean us up.

That man says he was born and raised a red man in the Cherokee Nation. Has he not all the rights of a citizen of that nation? Has he not a right to speak?

But let me read again a letter from T. D. Lee, in the Muldrow Register, a newspaper published at Muldrow, Cherokee Nation. I think he was an Indian policeman, though I am not sufficiently acquainted with him to be sure of this:

I wish to say something through your paper to my dear Cherokee people, the full bloods and the half-breeds who have no land nor no homes here in their own country. The intruder question is a big thing and making a good deal of noise. We are told that the intruders are all to be put out after January. That's all right, and good as far as it goes, but what is it likely to amount to? The monopolists have it all figured out to bid in the intruders' improvements, so that won't make it any better for Cherokees who have no land.

Some of our leaders make a great fuss and blow about the intruders robbing the poor Indians of their lands, when they know as well as anybody that some of our own people are robbing us a good deal worse—even 10 to 1—those fellows who are

"Indians for revenue only," many being white men who have married Cherokee women, and white "injuns." A few of this kind of people have gobbled up most of the best land in this nation, fenced it in with wire, and pastured many thousands of Texas cattle at a big profit, and pay not a cent of taxes on the land.

This class of people, who are called Cherokee citizens, rob us of ten times as much land as the intruders. Now, if we are robbed in this way, what's the difference who robs us? This everlasting talk of putting out the intruders and then doing nothing is getting so old and stale it makes me tired to hear it. Better say less and do something. If the bosses—

That is what they call these leading men—the "bosses"—

If the bosses want to help the people, why don't they handle those robbers who come under the Cherokee laws and make them give up those many thousand acres that belong to others? There has been lots of talk about doing this, but it has never been done. It appears that the cattlemen and the "Indians for revenue only" have too much money to have any such thing happen.

Is it not strange that they all refer to money when they speak of failure to get this thing done?

Some of those fellows who are making such noise about putting out the intruder robbers have robbed their own people worse than the intruder, and were the cause of getting many of the intruders into this country as a money-making scheme. This can't be denied. Before we make such a howl about the intruder robber let us sweep our own dooryard.

I see no good for the poor Cherokees in putting out the intruders if our rich men are to buy up their places.

The gentleman yesterday morning said to this committee that he had advised individuals to go and buy them out so that they could eject them, but the Indian has it in his mind that the rich men and the bosses will buy up those places and hold them, and they say that they would just as soon the intruders should hold them as the "bosses," because they will not be benefited by that transaction.

Just as well let the intruders stay here. The best way I can see out of this difficulty we are in is for all the land to be divided between the Cherokee people, so that each person may have what belongs to them, and no more. Then the intruders would have to go, and the land robbers give up what didn't belong to them. This would bring our home robbers to time and others also.

What that Indian has written has been said to this Commission time and again. The people talk about those men just in that way, and talk about the corruption of their council. Why, sir, since the last council adjourned the papers of the Territory, and even those published in Tahlequah, are charging that all kinds of jobs were sought to be put up there for the purpose of robbing the National Treasury. One paper published the statement that there was a $400,000 steal on hand, but that it was discovered in time to defeat it. This statement was published time and again in the papers of the Territory, and in a paper printed in the capital of the nation. And it was said that there was another effort to rob them of about $25,000; that on the evening of adjournment they had a good deal of whisky, and thought they had the thing safe, but in some way or other it was defeated. I am astonished only that any one of these jobs failed. The papers are full of another statement to the effect that during this session several parties were admitted to citizenship, and a reliable gentleman, writing to me from that Territory, tells me that some of them were intruders whose property had been appraised. The papers say and charge, and this gentleman writes me that it is an open secret, that they paid all of their Strip money for the purpose of getting their citizenship established by the council.

Mr. FISCHER. Is this division that you speak of, into the National party and the Downing party, a division upon political lines, or is it a

division having reference to the rights of the citizens against those in power?

Mr. McKENNON. They are all alike. When it comes to the spoils there is no difference that I have ever heard of.

The statements further charge that one judge received as a fee for this the sum of $500. These charges are made publicly in the papers, not only as to the last session of that council, but it is a general thing in that Territory. Hundreds of the common people have come to talk to us, whom we received kindly and heard all they had to say. They have told us one instance after another where these people have robbed them.

Have we a right to rely upon these statements and, as honest men, report to the Government the facts as we thus learn them? Have we a right to rely upon this information as to the condition of affairs existing there and to insist upon the intervention of this Government for the protection and care of the common people and their property in that country? Should we speak and act upon this information? Would you do so, sir? I apprehend that you would not long hesitate, but that you would report in even stronger terms than we have.

Just one other statement on that line. Mr. Cabaniss, about a year ago, received a letter from a young Cherokee Indian—as he called himself—in which he said that he was without a home and had been hunting a place to make a home; that he had ridden in company with one of these land barons pretty much all of one forenoon on his premises on one side of the Missouri, Kansas and Texas Railroad, and during the afternoon had ridden with him on the other side of the railroad—still on this man's premises. He told the baron that he wanted a home, and the baron was willing to sell him one, but the young man said it would cost him as much as it would to buy a home in Missouri, Arkansas, or Texas. That represents the condition of affairs there. It would have cost him as much for an occupation title only as for a fee-simple title in one of those States.

That is only one instance out of numbers that have come to our knowledge. These are the common people, it is true. But, sir, governments were made to protect the poor and the helpless. These people have appealed to us until we feel that something should be done to protect them.

Allow me to say a word here in regard to the argument that was made yesterday—remarkable, indeed—by my friend who had been the attorney-general of that nation, and whose duty it was to have the laws enforced. He was at the capital when this petition was introduced before the national council, and was there, I apprehend, when this message of Chief Mayes was read there, and has doubtless seen many of these publications in the papers, because they are constantly being made. Yet he could not tell you whether there was any monopoly of lands in that Territory. You will remember the question was asked him, and he said: "Well, well, now, you see—well, well—I don't know exactly myself; I don't deny that something may exist there, but you see, I don't know about this thing." That was the manner of his answer. Is it not remarkable that he did not know about these things? The common people know about these things, Mr. Chairman. We know about them; but Hastings knows not. Is there any question in your mind that such a condition of affairs exists there; if so, should it be allowed to exist longer? Should not the prayers of these people be heard? Should not their lands be restored to them for homes? They say they are homeless, and *not only* homeless, but in their own country

they are remediless. For that reason this bill was drafted, with a provision that these parties should turn these lands loose, and that they be apportioned among the people for homes; that the Government shall know that they have homes.

That is the duty of this Government in the sight of God and man. No honorable gentleman understanding the situation there can say aught to the contrary. It is in the hearts of this Commission, and we are here to plead for the poor full-blood who, in fact, knew nothing about his lands being sold for town lots. While public notice of the sale of lots may have been given, the fact remains that the bosses acquired and held the towns from one end to the other, and the plea has been made here that they be permitted to continue to hold them. Not only that, but that the men who hold these large pastures—these large tracts of land for which they have never paid a nickel—should continue to hold them, notwithstanding the fact that they have had the use and profits of them for years and years. They should not be dispossessed until they are paid for their improvements upon them.

Knowing the situation as I do, that argument impressed me and impressed my associates upon the Commission as an argument in favor of monopolies and against the common people of the country. The Commission ask for protection of the interests of these common people.

If we thus see these things, and are honest, should we not speak as we do? Should we, like cowards, slink away and refuse to give this information to the Government which we represent?

The CHAIRMAN. It is now 12 o'clock, and perhaps our sitting had better close, and you take up the thread of your statement at that point to-morrow.

Mr. MCKENNON. I am obliged to the committee.

Thereupon the committee adjourned till 10.30 o'clock a. m. to-morrow, Thursday, March 12, 1896.

THURSDAY, *March 12, 1896.*

The committee met pursuant to adjournment.

The CHAIRMAN. Judge McKennon, please proceed.

Mr. MCKENNON. Mr. Chairman and gentlemen of the committee, I stated on yesterday that this matter of the monopoly of lands of the Cherokee Nation had been mentioned by every one of the chiefs since 1890. Chief Mayes, in his message to the last council, recognized the fact that this monopoly was in existence, and as a remedy for it he recommended that the monopolists be required to pay a rental upon all the lands over and above a certain amount.

Mr. WHITE. Do you remember what that amount was?

Mr. MCKENNON. No, sir; I do not think there was any fixed amount; he just recommended that an amount should be fixed by the council. That was not done, but you will observe that he recognized the right of these people holding the lands to be left in possession while his countrymen were without homes. For what purpose? To raise a revenue for the General Government. He, in effect, recommended that the homes of the people be withheld from them in order that the tax thereon might be used as a revenue for the General Government. There is loud complaint against the intruders for taking money for appraised property and using it in support of their claim, and no one has justified proceedings so unfair. But those who make this complaint propose to with-

hold the lands from the people, leaving them homeless and to tax these lands, to raise a national fund with which to send delegates here to obstruct legislation by Congress by which these lands will be turned loose and restored to the unfortunate people for homes. This is the view taken of it by many of these people, as you discover from the letters which I have read to you from citizens of that Territory.

I assume that no national council of any one of the tribes in that Territory had the power, by any kind of legislation, to vest any right in any individual to take and hold more of that property than his fair and reasonable share of it. The legislation by which they have sought to transfer and alienate those town lots is an open and flagrant violation of the treaties and can not serve to divest any one of these people of his undivided interest in each one of those lots. Every individual Indian in that Territory has an equal undivided interest in every particle of that soil, and there never was any power in any tribal council to divest him of it. No other tribe has gone so far and presumed thus to violate the treaties. As I said before, these lots are held by a favored few. You can go to the little city of Vinita, one of the most prosperous and one of the largest cities in the Cherokee Nation, and you will find half a dozen persons owning almost the entire town, and all this property may be held from the common people, as well as these large holdings of land outside, in which the gentleman, Mr. Hastings, declares these people have a vested right. A vested right! Think about it! The gentleman is here representing one class of people, who say to this committee that these men who have obtained possession of these large holdings and are still withholding those lands from the homeless people unlawfully and unjustly thereby have obtained vested rights in them! If that is true, then I advise immediate legislation by which the titles of these land barons may be settled and quieted. They ought to have quiet possession of all their vested rights.

Those who have sent this petition to me requested me to intercede with the Secretary of the Interior and if possible secure transportation and subsistence for a committee to come here, composed of full-bloods and mixed-breeds—six in number—to present the side of the people as against those who are here. They complain that these people are using their money, the national funds, in which each individual Indian has an equal interest, for the purpose of their oppression. They want to come, but are poor and unable to defray their own expenses.

I have a letter from Vinita in which the writer states that Judge Springer's court is embarrassed with suits between lessors and lessees, between landlords and tenants, of these large holdings in the Cherokee Nation. Pass this bill and it will settle all such questions and relieve that court of this burden.

To illustrate the perplexing conflict of jurisdiction there, let me give you a case of which a gentleman wrote me a few days ago. Congress passed an act providing that a citizen of any of those tribes might take the oath of allegiance to the United States and thereby secure the protection of the United States, and specifically provided that this should not affect his rights as an Indian citizen. These people, in the face of that law, decitizenize a man for taking this oath. A negro, who is an Indian citizen, stole some fence wire from an Indian citizen, Charley Poole, a man who was born and reared there and whose citizenship was never questioned, but who had taken that oath. Poole undertook to have this negro prosecuted in the United States court at Muskogee, but that court very properly decided that as they were both Indian citizens it had no jurisdiction.

Poole went back and secured an indictment by a Cherokee grand jury against the negro. But when the case was called for trial before Judge Starr, the judge held that, as Poole had taken the oath of allegiance to the United States, he was in consequence not an Indian citizen, and that, therefore, he had no jurisdiction to try the negro for stealing his wire, and dismissed the case. Now, Charley Poole wants to know, as he is thus compelled to be a law unto himself, if there is any law against him killing the negro, and if he should do so whether he would lay himself liable. The courts are no better than anything else down there, and if any of them are honest I never heard of it. Numbers of instances have been given to this Commission in which the courts have asked and obtained money for their decisions. Senator Dawes told you of one case the other day.

I will add one more: One of the ablest and most prominent of the Creek Indians who have been here during this session of Congress gave Senator Dawes this statement. There were two Creek Indians, lawyers, who were partners. One of them was made a judge of a district court. When he was made judge he made this kind of a contract with his partner, the other lawyer: "I will decide all your cases in your favor that you bring in my court, and you divide the fees with me." That worked very well for some time. They got along harmoniously, and the fees were divided. But finally the lawyer got a $2,500 fee, and the $1,250 was just a little too much for even an Indian to hand over, and so he went back on the judge. Then the judge went about telling of this and denouncing his partner as a dishonest man for not living up to his contract.

Mr. FISCHER. The judge ought to have reversed his opinions.

Mr. WHITE. May I ask how those courts are formed? I do not know, and I ask for information.

Mr. MCKENNON. They are a part of the government.

Mr. WHITE. Are the judges elected?

Mr. MCKENNON. Yes; by the people I think. I will state, however, that any man may be a judge there without regard to any special qualifications.

Mr. GAMBLE. Without regard to his legal attainments?

Mr. MCKENNON. Yes.

The CHAIRMAN. A blacksmith is chief justice of the Cherokee Nation, is he not?

Mr. MCKENNON. I do not know. As to this matter of citizenship, I want to read some affidavits which were sent us, and you will see what they say to us. A number of these persons, I suppose eight or ten, came to us at Fort Smith and desired to be heard. We did not refuse them. Some of them looked just as much like Indians as any Indians you have seen in this city during this sitting of Congress.

Rachel Edwards, who on oath states: I am about 65 years old; my post-office address is Muldrow, Ind. T.; I am a Cherokee woman; I was born in the old nation, East, and was emigrated to this, the Cherokee Nation, by the United States Government in the year of 1836, as well as I can remember.

Her record as an Indian seems to be pretty good.

I have lived in this nation from that time to this date.

My first husband was Moses Edwards, a prominent Cherokee citizen, from which marriage there was no issue, Edwards dying soon after the war.

Some years later I was married to a United States citizen, a white man, by the name of Timpson. We could not get along peaceably together, hence I was divorced under the Cherokee law. My rights have never been brought in question until the census taker of my district reported me as being doubtful. Their plan of marking Cherokees doubtful was to place a red mark opposite the name. This was in 1893.

On September 5 I made an application to a merchant of Muldrow for credit, on the strength of my Strip money. The merchant, to satisfy himself of my being a legal Cherokee citizen, wrote to the executive department of the Cherokee Nation, requesting to know my true status as a Cherokee citizen. He was furnished with the following certificate:

"EXECUTIVE DEPARTMENT, CHEROKEE NATION, IND. T.,
"*Tahlequah, September 5, 1892.*

"I hereby certify that the name of one Rachel Edwards, female, appears on the census rolls of 1880, Schedule I, census of Sequoyah district, Cherokee Nation, as a native Cherokee by blood.

[SEAL.] "R. T. HANKS, *Assistant Executive Secretary.*"

On the assurance of the Strip money I secured credit of something over $100. When the treasurer of the Cherokee Nation was paying the Cherokees' pro rata share of the Strip money I applied for my money. Their excuse was I was marked doubtful, and that I would have to appear before the Cherokee council and be reinstated before I could get my Strip money. I went before the council in 1894. After pleading with the members to place my name on the proper roll I was treated with contempt, and couldn't secure any action for or against my case. There are many others in the same condition to-day. I make this statement to show the injustice that is being meted to citizens of the Cherokee Nation by people of our own blood.

Gentlemen of the Dawes Commission, if within the scope of your authority, make such recommendations to the Government of the United States as will correct this great wrong which is being practiced by those in authority in the Cherokee Nation.

Your petitioner will ever pray.

RACHEL EDWARDS.

Attest:
J. F. ANDERSON.

Does not that look upon its face like that woman ought to be entitled to the rights of citizenship in the Cherokee Nation? When such a statement is presented to us what should we think of it?

I will now read you a short certificate:

[Commission on citizenship, Cherokee Nation, Ind. T., Tahlequah.]

OFFICE SUPREME COURT, CHEROKEE NATION.

This will certify that Mrs. Sarah J. Bell, wife of Dr. M. Bell, has proven to my satisfaction, by affidavits of Dr. S. H. Payne and wife, Martha A. Payne, made before Eli Sanders, clerk of the district court for Sequoyah district, that she is a full sister to said Martha A. Payne and Eudoria Cobb, who established their Cherokee right before the court of commission at its sitting, and dated May 29, 1871, by blood. Therefore Mrs. Sarah J. Bell is entitled to all rights and privileges of other Cherokees in the Cherokee Nation.

Given from under my hand the 13th day of November, 1871.

JOHN S. VANN,
Chief Justice, Supreme Court.

I hereby certify that the above is a true copy of the original on file in this office.

D. S. WILLIAMS, *Clerk Commission.*

This 19th day of April, 1889.

Mr. CURTIS. Those are the same parties, the Cobb man and woman and the Paynes, that were turned out of the Cherokee Nation because they had obtained admission by means f false affidavits, are they not?

Mr. MCKENNON. I suppose they are the same. This is Dr. Payne, and I suppose it is the same Payne.

Mr. CURTIS. Yes; and that ruling was sustained by the Interior Department.

Mr. MCKENNON. Yes; this woman was admitted to citizenship. She was never turned out.

Mr. CURTIS. What was her name?

Mr. MCKENNON. Sarah J. Bell.

Mr. CURTIS. Wife of Dr. Moses Bell?

Mr. MCKENNON. Dr. M. Bell. I suppose it is the same. Do you say she has been tried and turned out?

Mr. CURTIS. Yes; Dr. Bell had his trial on that question; at least the name is similar.

Mr. MCKENNON. Then, this plainly shows their methods. I have another case which I will file, without undertaking to read it. The case of Mrs. E. M. Black.

The paper is as follows:

MULDROW, IND. T., *November 12, 1895.*

The Hon. DAWES COMMISSION,
Fort Smith, Ark.:

Having learned that your honorable body would hear complaints of persons termed by the Cherokee authorities as intruders, permit me to say that I am a Cherokee woman; derived my Cherokee blood from my grandmother, Cerena Sevier, a half-breed Cherokee, who married Culwell, a white man. My mother, Elizabeth D. Culwell, married John C. Jackson, a white man. I married William P. Black, September 1, 1867, in Hunt County, Tex. Since our marriage there have been five children born to us. We moved to the Cherokee Nation, and on the 22d day of September, 1888, the Adair court readmitted myself and five children to citizenship in the Cherokee Nation, which right we enjoyed until we incurred the displeasure of some official. (See certificate of citizenship marked A.) We have, by hard labor and by close economy, accumulated considerable improvements. We have now about 500 acres in cultivation, with six dwellings on it, and four houses and lots here in Muldrow, all made since August 11, 1886. All these the Cherokee authorities propose to confiscate January 1, 1896.

It is and has been the custom of the Cherokee authorities to place any person who incurred their displeasure on the intruder list.

In December, 1891, the sheriff seized and sold 175 tons of hay of ours on a report, so he said, that we were intruders. I offered to show him my certificate, and he would not look at it.

In May, 1892, Dr. Nairn, a Cherokee citizen, began suit in the United States Court at Muscogee, Ind. T., to take my home on the plea that I was an intruder. The court sustained me as a citizen of the Cherokee Nation by giving me my home and also the hay. Then they tried to have Mr. Black indicted for testifying that he saw the chief sign my certificate. The grand jury refused to find a bill against Mr. Black (my husband).

The census takers took our census, and afterwards placed us on the roll of intruders and as such refused to pay me our Strip money, and our names were reported to the board of appraisers who were appointed by an act of Congress to appraise the improvements of the so-called intruders. The said board didn't appraise our improvements, they having been made or acquired since August 11, 1886. Our valuable improvements, the fruits of industry and hard labor for many years, they now propose to confiscate January 1, 1896; and not only this, but they propose to put us out beyond the limits of the Cherokee Nation as vagabonds and intruders.

Gentlemen of the Dawes Commission, I am a citizen of the Cherokee Nation by blood, and was readmitted to citizenship by a Cherokee court, created by an act of the Cherokee national council, and was so recognized by the authorities of the Cherokee Nation. (See shippers' permit, and law regulating the shipment of hay, back of permit; also, blank of monthly reports.)

Please permit me, in the name of justice, to say, if such a removal is anticipated by the United States Government, if it is under the scope of your authority, please recommend to the Honorable Secretary of the Interior and to the Congress of the United States a suspension of the removal, in view of pending legislation by Congress.

Your petitioner ever prays.

E. M. BLACK.

Sworn to and subscribed before me on this 12th day of November, 1895.

[NOTARIAL SEAL.] W. J. WATTS, *Notary Public.*

This certifies that this is a true and correct copy of the original certificate of citizenship to her and five children, September 22, 1888.

Given under my hand this 11th day of September, 1895.

L. S. BYRD,
Notary Public, Northern District of United States Court, Ind. T.

My commission expires January 1, 1898.

Certificate of admission to Cherokee citizenship.

OFFICE OF COMMISSION ON CITIZENSHIP,
Tahlequah, Cherokee Nation.

To all whom it may concern, greeting:

This is to certify that the following-named, to wit: Eliza M. Black and her five children, Dora L., Forrest C., J. Elliott, Kennie D., and Della M., ages, respectively, viz, 44, 17, 11, 9, 8, 7, did, pursuant to the provisions of an act of the national council of the Cherokee Nation, approved December 8, 1886, entitled "An act providing for the appointing of a commission to try and determine application for Cherokee citizenship," make such application to and before said commission, on the 26th day of September, 1887; that the proof submitted by the above-named applicants in support of their said application has been found and is hereby declared and certified to be sufficient and satisfactory to the said commission according to the requirements of section 7 of said act of the national council, and that by virtue of such finding of fact by the commission, and in conformity with the fourteenth section of said act, the above-named parties (applicants for citizenship) are from this the date of said finding and decision of the said Commission announced and recorded, readmitted by the national council, as provided in said fourteenth section, to the rights and privileges of Cherokee citizenship, under section 2, article 1, of the constitution of the Cherokee Nation; and this certificate of said decision of the Commission and of readmission by council is made and furnished to the said parties accordingly.

In witness whereof I hereunto sign my name, as chairman of the commission, on this the 22d day of September, 1888.

J. T. ADAIR,
Chairman Commission on Citizenship.

Attest:

CONNELL ROGERS,
Clerk, Commission on Citizenship.

Approved and indorsed.

J. B. MAYES,
Principal Chief Cherokee Nation.

[SEAL.] HENRY EFFORT,
Assistant ex-Secretary, Cherokee Nation.

Received of W. P. Black $1.35, for royalty paid for prairie hay shipped at the station of Watoba, Ind. T., 13,700, subject to a tax of 20 cents per ton.

F. METZNER,
Deputy Clerk, C. D., C. N.

Monthly statement.

Of prairie hay shipped or sold by ——— ———, of Ind. T., during the month ———, 189—, ——— tons and ——— pounds, subject to a tax of 20 cents per ton, amounting to ——— dollars and ——— cents.

——— ———.

Sworn to and subscribed before me on this the —— day of ———, 189—.

———,
Clerk Cooweescoowee District, C. N.

To H. H. TROTT,
Clerk Cooweescoowee District, C. N.

Received of E. M. Black $6.00 to apply on permit to employ Frank Banks to labor as a farmer within this district for the term of (12) months from date.
This Jan. 1st, 1892. Expires Jan. 1, 1893.

F. METZNER, *Spec. Dep. Clerk, C. D., C. N.*

CHEROKEE NATION, COOWEESCOOWEE DISTRICT,
Office of Clerk.

Whereas E. M. Black has petitioned this office for a permit to ship prairie hay beyond the limits of the Cherokee Nation:

Now therefore, I, H. H. Trott, clerk of Cooweescoowee district, Cherokee Nation, by virtue of authority in me vested by law, empower, authorize, and permit E. M. Black, a citizen of the Cherokee Nation, to ship, transport, or carry beyond the limits of the Cherokee Nation, prairie hay cut in said Cooweescoowee district in the year of 1891 and 1892. The said E. M. Black being subject to and required to

comply with all the conditions of the act of national council approved Dec. 2, 1889, entitled "An act to protect the public domain, and for the purpose of revenue."

In testimony whereof, I hereunto set my hand and affix the seal of my office on the 27th of June, one thousand eight hundred and ninety-one.

H. H. TROTT,
Clerk of Cooweescoowee Dist., Cherokee Nation.

W. H. DREW, *Debt.*

Mr. MCKENNON. These papers were given to us, and there are persons who came before us, and who looked as much like Indians as any Indian I have ever seen, and who said they were born and reared in the Cherokee Nation and that they had been deprived of citizenship. They made those statements before the Commission, and we had no cause to disbelieve them.

Mr. CURTIS. May I ask another question?

Mr. MCKENNON. Yes, sir.

Mr. CURTIS. Did those who claimed to have been born and reared there, and to have been deprived of citizenship, claim to have been born prior to the passage of the resolution by their council calling upon these people to come and make proof of citizenship?

Mr. MCKENNON. Yes; they were grown people.

Mr. CURTIS. There were others besides these you mention?

Mr. MCKENNON. Oh, yes; a number of others came and made such statements to us, and they seemed to be just as honorable and credible people as these before you. We do not know the difference; we never learned the difference.

There were some families who had for a time been living over in the Creek Nation. When the Cherokee Strip payment was being made they were excluded, and they were told that they would have to be readmitted. They stated, as we were informed, and that is the general talk there, and none of these Commissioners ever heard it denied, that they had to pay that council $100 each to get readmitted, and that that money went into the pockets of the councilmen.

I can give you two or three such cases, as reported to us, and I understand there are a number of others. One was the case of the Willison family, about five in number, who had to pay $100 a piece, which would have made $500, to get reinstated. There were two Berry families treated in the same way.

The only reply I have ever heard made in such cases is, "Oh, well, they were entitled to citizenship anyway; they were not wrongfully admitted." If that be true they should have had their citizenship without money and without price. These are the kind of statements made to us in regard to citizenship.

When we were here last winter a serious complaint was made against Major Kidd. Major Kidd is an irritable man and sometimes says unpleasant things. But I am pleased to say that I have been associated with him; that I know him, and that he is a just, honest, upright, honorable, conscientious, and kindhearted gentleman. No man who knows him will speak to the contrary. But they complained that he was not acceptable, that he had made himself unpopular, and in order to conciliate these people it was determined to transfer him to another service, which was done, and, as I understand, at their suggestion General Armstrong was put in his place. General Armstrong was born in the Choctaw Nation, was well acquainted with the people in the Territory, and was regarded as their fast friend always. Judge Montgomery, of Kentucky, you well know. Mr. Cabanis, of Georgia, you also well know. They were also placed upon the Commission. They went down *there with the* idea that we had been harsh with those people, and that

our report was too severe. When we went there we were, as we are to-day, the friends of the common people of that country, and we are here in their interest.

When it came time for us to make our report they signed the present report which indorsed the other. Six gentlemen, as members of this Commission, have signed these reports and make these statements. And there are three members of the Senate (Senators Teller, Platt, and Roach) who make similar statements, supporting everything we have said as to the corruptions of these governments. Yet these gentlemen say we have all stated falsehoods. They even went further than that. Chief Mayes wrote an article, published in the New York Sun, in which he said that it was all a lie, false as hell. Is it not strange that we would all lie in that way?

I have seen, also, the correspondence of a man in the Philadelphia Press, who went down there and wrote from the parlor of Chief Harris, and he says that he was not there more than an hour before he knew the whole situation, and he says we lied. That is fine proof, isn't it?

I hope that I have shown you gentlemen that we went there in the friendliest possible spirit toward those people, as did also our associates within the last year—General Armstrong, Judge Montgomery, and Mr. Cabanis. When the Commission was reorganized and we were getting ready to start down there, Senator Dawes wrote a communication to each one of the chiefs, informing him of our contemplated visit to the Territory and the purposes of our visit. We went down, and immediately Chief Harris again proceeded to call an international convention for the purpose of uniting the tribes in a general resistance to the work of the Commission, which was called to meet at Fort Gibson. We were informed that a resolution to invite the Commission to be present and talk to that council was promptly voted down. When the convention met the Choctaws were not represented, and for that reason it adjourned to meet at a subsequent date, on the 28th of June, at Eufaula.

They met at Eufaula and reaffirmed the resolutions adopted the preceding year. That was the action of the chief of the Cherokee Nation. They complained bitterly that we did not pay any attention to them. Chief Harris came to visit us at Muscogee, and as you will see in his communication to us, which is printed in our report, in answer to our propositions to have a committee appointed to confer with us, he says that he had no authority to do that, that no one was authorized to do that, no one could be authorized without the convening of the council, and that it would not convene until the 1st of November, and it did not convene until then.

In the meantime, gentlemen, we did not visit them. Do you suppose that had we paid them a social visit it would have promoted the work? Will you conclude that there was any kind of obligation resting upon us to pay them a social visit? We did not do it because we did not believe that it could in any way promote the work we were sent there to accomplish. But they complain.

At a later date we addressed a communication to them calling their attention to the fact that the time was coming when we should be required to make our report to the Secretary of the Interior, and urging upon Chief Harris the appointment of a commission to negotiate with us. He answered that he was going out of office, but would lay the matter before his successor and ask him to lay it before the council.

They were informed of the time when we would leave that Territory. We remained there until we were required to make our report to the

Secretary, which we prepared, and then were ordered away by the Secretary. After we went away from there the council proceeded to appoint some gentlemen to confer with us, but expressly forbade them to do anything.

In their reply to our report you will see printed a communication which purports to have been addressed to us. Not one member of this Commission ever saw that communication until after we arrived in the city of Washington, when a friend hunted up a copy of that reply and brought it to me, and then we read that communication for the first time.

We had left the Territory before that was written or purports to have been written, and they knew we had gone.

Mr. DAWES. They were informed of the fact that we were going away.

Mr. MCKENNON. I stated that they had information of the fact that we were going away. When we first went down there the first year we were invited by the people at various points to visit and address them. They wanted to see us and talk to us; wanted to hear what the Government was going to do. They sent us invitations from all parts of the country to visit them. For a time we declined to accept these invitations, but when we found that we could do nothing else, I believe I made the suggestion, and we finally determined to visit them, and Major Kidd and I visited various places in the Territory and addressed large audiences of the people. We thought this right, as we could not do anything else. We sought by that means to reach the common people, the common citizens of the Indian Territory. I spoke in the Cherokee Nation at Muldrow, Vinita, and Chelsea, and, as I stated yesterday, we addressed the nominating conventions of the two parties. We went all through that country. They say we do not know anything about it; we do know too much about it and that is the difficulty. You see I know about this thing. I have been there almost all my time for two years; I have visited almost every section of that country; I have gone through the country and talked to all classes of people, the citizen and noncitizen, the white, the black, and the red; all of them. From these sources I have been informed of the actual condition of affairs there, and I do not think it is arrogating too much to myself to say that I think I know as much about that Territory as anyone.

They insist upon another committee being sent down there. Six commissioners have reported upon the condition of affairs there, three from the Senate, and all concurring in the same statements. When they ask for another committee it is simply for the purpose of delay in order that they may prolong their holding and control of that country.

If you conclude to pass some such legislation as this suggested, and you come to the conclusion that we are not honest and will not do right and what is best for the people there—if any question arises in your minds in regard to that—look for some one else, get somebody else, and they will go away from there in just as bad repute as we are, for they do not like anybody who comes between them and their unholy money getting. You can see that these are the facts. They are unpleasant facts to state, but you can comprehend them just as well as I can.

They say we have exaggerated the amount of crime committed there. It has been said that we adopted the statements published by a paper in one of the border States, written by some one who knew nothing about it. We have made no statement on that line. A member of this committee has in his possession a list, taken from the papers published

in the Territory, of the murders committed since the adjournment of Congress on the 4th of March last up to the present time, amounting to 260 or 275; I do not know the exact number. Reason will teach you gentlemen, however, that those were not all the murders that were committed there. This list does not contain all of them. Many were committed, statements of which never appeared in print. No one man, no half dozen men, can go through the papers and get every instance of murder committed in that Territory.

Mr. CURTIS. Please tell us what classes commit these murders.

Mr. MCKENNON. All classes; Indians and white men.

Mr. CURTIS. Do the white intruders commit many murders?

Mr. MCKENNON. I have never heard of any murders committed by those called intruders. I have never heard that charge made against the class that are properly termed intruders. The white population, aside from about 200, as stated here by Mr Hastings, are not regarded as intruders. A man is an intruder who, claiming to be an Indian, gets possession of land and claims that he has a right to it. A man who goes in there and leases land from an Indian is not regarded as an intruder. If he pays his permit he is there lawfully. Of course many of them do not pay for their permits. But I answer that all classes of people there commit murders—white and black, Indians and all.

Mr. LITTLE. There are renegades there from the States.

Mr. MCKENNON. Yes, sir.

Mr. FISCHER. I understood Senator Dawes to say that they had some trouble with regard to fugitives from justice.

Mr. MCKENNON. About a year ago Governor Fishback, of Arkansas, addressed an open letter to the President of the United States—possibly you have not seen that—in which he sets out the difficulty that the State of Arkansas labors under in getting fugitives from that Territory. It is a city of refuge for criminals from the surrounding country.

Mr. FISCHER. Have you any data to show the causes of those murders, whether they arose from disputes about land, drunken brawls, or how?

Mr. MCKENNON. I do not know about any disputes as to land.

Mr. FISCHER. They do not settle them in that way?

Mr. MCKENNON. No, sir.

Mr. LITTLE. There are robberies committed there?

Mr. MCKENNON. Numbers of them; almost of daily occurrence. It is hard to tell what causes the murders. They kill for any cause and without cause.

Mr. GAMBLE. What is the rule in the courts there in regard to the punishment of these crimes? Are the courts capable of prosecuting and convicting?

Mr. MCKENNON. You mean the Indian courts?

Mr. GAMBLE. Yes.

Mr. MCKENNON. I have not known exceeding half a dozen punishments for murder since I have been in that Territory.

Mr. GAMBLE. So they really go unpunished?

Mr. MCKENNON. A number of them have come to my knowledge that were never prosecuted at all.

The statement has been made that there is no more crime in that Territory than there is in the States surrounding it. Let us see about that. I am going to give you the figures and I shall stand by the record. We will say, for instance, that there were 275 murders committed in that Territory.

Mr. GAMBLE. Within what time?

Mr. McKENNON. Since the adjournment of Congress on the 4th of March last. Let us see the magnitude of that. I have inquired of the officials of my State (Arkansas) in order to determine how many murders would probably be committed in Arkansas during that time, and they have estimated the number at from 40 to 60, not higher than 60. The estimates were made by ex-Governor Fishback, Governor Clarke, and Attorney-General Kinsworthy, and I have talked to Judge Little upon the subject. No one has fixed the number higher than 60; we will take that as the number. How does that compare with the Territory? The Territory comprises something less than 20,000,000 of acres; that would be about 33,000 square miles. Arkansas has 52,000 square miles. If 33,000 square miles has 275 murders, 52,000 square miles would have about 433.

Mr. GAMBLE. But how would the comparison stand if made by density of population?

Mr. McKENNON. I am coming to that. The population of the Territory will not exceed 400,000, and that is a high estimate. The population of Arkansas is something over 1,500,000, about four times as many. If the population of Arkansas committed as many murders in proportion, the number would be about 1,732, or 23 to the county. Do you not know that if such a condition existed in Arkansas martial law would be proclaimed there for the protection of the people? That is not an exaggeration. Make your own calculations and see if I am not correct.

If such is the condition of affairs there I ask whether this Government, which is responsible for it, ought to stand by and allow it to remain as it is.

Mr. CURTIS. Could not that same argument be applied by one State to the population of another State?

Mr. McKENNON. We do not find that same showing in any State of the American Union. Nor has there ever been anything like it in any Territory in this country that we are advised of.

Mr. CURTIS. I do not mean that. I mean the rate. There are States where there have not been ten murders committed in the last year.

Mr. McKENNON. The relations between States are different from the relations between the United States and that Territory. One State is not responsible for the conditions of another State, nor is the General Government.

Mr. CURTIS. But you are making the comparison of the Indian Territory with Arkansas. It is admitted by everybody that the Territory is the place where men charged with crimes in the border States go to, because in the Territory the laws are not properly administered and there is only limited jurisdiction in the courts. You would not expect that degree of peacefulness to exist there that you would expect in a State. A lawyer from Topeka, Kans., who lives at Muscogee, told me that in two years' residence in that town he had not known of but two street brawls. I think that is a pretty good showing for a town where there is no law.

Mr. McKENNON. Let me give you the facts about the town of Antlers, in the Choctaw Nation. I had it in a letter, and a gentleman was here who talked to the Commission about it, and from the 15th of November up to the first part of last month 6 men were killed within a mile of that town; that a man was moving from Kansas to Texas, and stopped and encamped in the woods with his family 7 miles from the town; that an Indian came along with his Winchester, and seemed to be very friendly; they invited him to eat supper with them and he did so; he *started off* after supper in an apparently good humor, and upon getting

off about 40 yards he fired into the family and killed the man. That was only 7 miles from the town of Antlers. The town of Muscogee is composed mostly of whites. They have fine schools and churches, and the United States court, with all its officers, are there to preserve order.

In the city of Ardmore the population is composed of good white people, who regulate their own affairs. The city of Purcell is in like condition. You will not find many murders committed in Purcell or Ardmore. They have good order.

There are just as good people in that Territory as you have in any State of the American Union. A large majority of them are good people. But, sir, I am comparing these conditions, and while I would not expect the conditions to be as good there as in the States, I say that this Government, which is responsible, ought to place that Territory in such condition that we might expect the same protection for life and property there that we find in any State of the Union.

Mr. CURTIS. Why could not that be accomplished by extending the jurisdiction of United States courts over all the Territory for all crimes committed against the peace, regardless of the citizenship of the party committing the crime?

Mr. MCKENNON. Give the United States courts such jurisdiction?

Mr. CURTIS. Yes.

Mr. MCKENNON. I believe there is a provision in this bill to accomplish that; but those courts are incapable of doing all the business of that Territory. If you enlarge their jurisdiction to that extent you will have to create additional courts. My dear sir, I make these suggestions as to the conditions there, and it is for you to determine what shall be done. Of course we drafted this bill, and you know why we did it.

Mr. CURTIS. We understand that.

Mr. MCKENNON. We are here to serve the Government, and are trying to do it just as modestly as we can. We are called upon to inform you of the conditions, and then it is your business to determine what is best to be done.

As a citizen of Arkansas, as a citizen of this Government, having an interest in every portion of this country from one end to the other, I hope the Government will interfere in these matters so far as to do something for the protection of life and property in that Territory, for it is certainly necessary to our civilization to improve the conditions that now exist there.

Mr. MADDOX. How does that condition affect the surrounding States?

Mr. MCKENNON. Last year Governor Fishback addressed an open letter to President Cleveland for the purpose of calling his attention to the difficulties that we labored under there upon the borders of that State. We have a letter from Governor Fishback, which I will read, and which shows that condition of affairs, and how we are affected by it.

Mr. CURTIS. We have the same trouble along the Kansas border.

Mr. MCKENNON. I will read this letter:

FORT SMITH, ARK., *March 7, 1896.*

Hon. J. S. LITTLE.

DEAR BASS: We have had two recent raids upon banks, one in Arkansas and one in Kansas, from the Indian Territory. They killed Director Goodwin in Warren the other day, and were chased back to the Territory 175 miles, but not caught. They killed Dorsey in Wichita, but were caught and mobbed.

The United States Government is responsible for these murders, for it fosters the condition which tempts them.

Very truly, your friend, WM. M. FISHBACK.

I will ask Mr. Cabanis now to read a letter written by Mr. Smith, who is the assistant United States district attorney at Fort Smith, addressed to Judge Springer.

Mr. Cabanis read as follows:

FORT SMITH, ARK., *January 2, 1896.*

Judge WILLIAM M. SPRINGER, *Muskogee, Ind. T.:*

DEAR SIR: Complying with your request, I inclose herewith statement showing number of criminal cases disposed of in this court during the fiscal year ending June 30, 1896, and also number pending at commencement of present fiscal year.

To this I would add that the two grand juries, August and November, since the close of the last fiscal year have found thirty-three indictments in capital cases. Four hundred and fifty-five indictments for crimes other than capital have been found since the close of the last fiscal year.

Court opened for August term on 5th of August, and the regular panel of jury held until about the 20th of October, every day from 8.30 to 6 o'clock, being occupied with the trial of criminal cases. Court was open regularly from this time to November 2, but there was no time for civil business, this time being necessary for motions for new trial, sentences, etc. Then on November 4 the November term commenced, with a new jury, and continues at this time. The work has occupied every day except November 28 and December 25, and I suppose the present jury can be discharged about the 15th of this month. The February term will commence February 2, and so on ad infinitum.

You ask what per cent of this business comes from the Creek, Cherokee, and Seminole nations. There is no way of determining definitely, but a conservative estimate would be 75 per cent. I have never heard it placed lower, and those most familiar with the court would probably consider it greater. I should say at least 75 per cent of the cases come from these nations. This court has jurisdiction over a part only of the Choctaw Nation, and this nation as a whole has less of crime than either the Creek or Cherokee. * * *

Yours, most respectfully,

EDGAR SMITH,
Second Assistant District Attorney.

United States court for the western district of Arkansas: Number of criminal prosecutions terminated during the fiscal year ended June 30, 1895, 909. Of these there were 662 convictions, 158 acquittals, and 89 dismissed. There were 193 criminal prosecutions pending July 1, 1895.

Mr. FISCHER. That court has no jurisdiction over crimes committed in the Indian Territory by Indians against Indians?

Mr. CABANIS. None at all; but it has jurisdiction of Indians who commit crimes against white men, and vice versa.

Mr. STEWART. Cases between Indians are disposed of in the Indian courts?

Mr. CABANIS. Yes.

Mr. MCKENNON. I will make another statement to show you further difficulties. The last council of the Cherokee Nation passed what is called the "white clerk law," which provides that no white clerks should be employed by the merchants in the Cherokee Nation. I am informed now that, in order to defeat the operation of that law, these parties who want to employ white clerks take the oath of allegiance to the United States Government and then employ them as they choose.

Mr. LITTLE. They become decitizenized.

Mr. GAMBLE. Will you not repeat that statement? Mr. White did not quite catch it.

Mr. MCKENNON. The last council of the Cherokee Nation passed a law prohibiting the merchants who are citizens of the nation from employing white clerks, to force them to employ Indian clerks. Now, I understand that, in order to avoid that, they just simply take the oath, and thus avoid the force of the law. They avoid jurisdiction of the Indian courts.

Mr. GAMBLE. By taking the oath to the Government of the United States they decitizenize themselves; do they surrender all rights in the tribal property?

Mr. MCKENNON. No, sir; I do not understand that the Indians claim that. They simply deprive them of the political rights of citizens. They do not undertake to deprive them of property rights.

Yesterday, after I had closed my remarks, Mr. Hastings mentioned the fact that I read a letter stating that it was in the writer's mind that the bosses, as they term them, would buy in the intruder property, and thus secure advantages to themselves. He says that the last council passed an act providing that the payments should be in six equal annual installments, thereby enabling the common people to buy these places. I make this statement because I do not desire to do any one an injustice.

Mr. MADDOX. What do you mean by taking the oath?

Mr. MCKENNON. They take the oath of allegiance to the United States to avoid the jurisdiction of the Indian courts to try them for violations of law.

Mr. MADDOX. What do you find to be the feeling of these people toward the United States—I mean as to whether the Government is their enemy or their friend? I have heard something on that score recently.

Mr. MCKENNON. I have heard some violent expressions from the leading class of men there in that regard, but I have heard nothing of the kind from the common people. I do not know that I have heard anything of that sort at any time from the common people. I have heard of expressions from some of them since they have been in this city. I have heard that some of these gentlemen who have been before you have used some violent expressions, but it was not my purpose to mention this.

Mr. STEWART. I think it is important for this committee to know that.

Mr. LITTLE. I suggest that there is a gentleman present who has heard those declarations, and he will give them to the committee.

Mr. MCKENNON. I have heard that they made some very violent statements against the United States Government since they have been here, but I can not state who made them. I have not sufficiently accurate information to be willing to make any statement to this committee.

A MEMBER. Was it something about Hawaii?

Mr. MCKENNON. No; I think the wish was that three or four of the great powers would jump on us and give us a good flaxing.

The CHAIRMAN. Let me suggest, Mr. McKennon, that it is now ten minutes of 12, and perhaps you had better refrain from beginning upon a new topic. We have been having these hearings for a couple of weeks, and we have some bills to dispose of. If there is no objection, the hearing will now be adjourned until half past 10 Saturday morning.

The committee adjourned until 10.30 o'clock, Saturday, March 14, 1896.

THURSDAY, *March 19, 1896.*

The committee met pursuant to adjournment.

The CHAIRMAN. Judge McKennon, please proceed.

Mr. MCKENNON. Mr. Chairman, I feel it due to General Armstrong, as also to the committee, to say that the reason why he has not been in attendance upon the meetings of the committee, as requested, is that he has been confined to his home sick.

I desire to read an extract from a letter to Judge Little, of recent date, from the town of Vian, in the Cherokee Nation:

I had been here at this little place but four months, and there were six men killed in 5 miles square of this place. I arrested three parties charged with murder of two of these parties, two of which were convicted of murder and one of manslaughter. Four of these were Indians on both sides, and there has never been an arrest made for all of these killings. This is in Illinois district of the Cherokee Nation.

You spoke in your speech of dropping off the roll. We have just had a taste of that. A young fellow by the name of McAnally was enrolled as an Indian, and did at one time draw money, but when the last per capita payment came he found he was not on the roll. He committed an assault with intent to kill on an Indian here a few days ago, and the Indian authorities here arrested him, and their district attorney would not try him. He said if they tried him they admitted he was an Indian, so they turned him over to the Fort Smith court, and he just plead jurisdiction and come out of his trouble.

Also, an extract from the Muskogee Phœnix, of March 12:

A crowd of drunken fellows terrorized the people of Fort Gibson by running their horses over town and the promiscuous shooting of Winchesters, last Friday night. They wound up their carousal by shooting out the front window of a store in old town and carrying off a lot of flour, coffee, tobacco, cigars, etc.

Such raids upon that town have occurred a number of times since the Commission went to the Territory, and more than once they have robbed the railroad agent there. From the newspapers and statements of individuals who live in Muldrow, we have information of a number of raids by desperadoes upon that town who rode through the town firing their guns and intimidating the town authorities. The mayor of Afton came before the Commission at Fort Smith and made statements of similar raids upon his town, and said that the town government serves only to invite attacks of desperadoes of the surrounding country. These are all towns in the Cherokee Nation, and these offenses were in open daylight and in the face of Cherokee officials. Mr. Chairman, you can not pick up a newspaper published in that Territory which does not contain accounts of murders, and these are never denied down there by anyone, and the crimes of robbery and larceny at least keep pace with the crime of murder.

I regret that I did not get a copy of Judge Bryant's letter, but from hearing it read I understood him to say that there was less crime committed in the Indian Territory than in the territory of other States surrounding it; yet, he says that is necessary to maintain two United States courts on the outside in order to keep the peace in the Territory, and if they were removed there would be a pandemonium in the Territory. He suggests that if the United States Government would remove all criminals from the Territory there would be no trouble there. So if the criminals were removed from any other State or Territory, the country there would be left in profound peace. It would have been kind of Judge Bryant had he thought to suggest how all of these criminals could be removed from the Territory.

I now desire to show you how the members of the Creek council when assembled determined to administer upon the estate of their constituents, and proceeded to apportion among themselves the lands of that

tribe, from which you will see that a few of the Creek leaders at least favor allotment. I will read to you a partial list of Creek pastures.

For convenience the Creek Nation is divided into three districts, or belts, in the investigation of this monopoly. Here is a result of that classification, with the names of the monopolists and the number of acres they have fenced:

NORTH BELT.

	Acres.
Standwatie pasture	4,344
John Yargee	9,085
Pole Cat Pasture Company	18,046
Rock Creek Pasture Company	15,305
Post Oak and Bruner Pasture Company	15,688
Wm. Sapulpa Pasture Company	17,762
Samuel C. Davis pasture	8,151
Bluford Miller Pasture Company	10,870
Salt Creek Pasture Company	26,081
N. P. Smiley Pasture Company	4,781
S. A. Bland Pasture Company	5,946
D. M. Hodges Pasture Company	26,920
Fisher & Anderson Pasture Company	19,098
G. B. Perryman	68,170
Ben Marshall	6,116
Drew & Kelly	2,468
Warrion & Marshall	13,865
Bob Daniels	2,915
Chissoe & Robinson	4,362
Hotulkee Hajo Pasture Company	32,000

WESTERN BELT.

John Buck Pasture Company	32,000
C. B. & Thomas Perryman	32,000
T. J. Adams	32,000
H. J. Reed	31,160
George Toger	32,000
Brumer, Hailey & McIntosh	32,000
Knight Bros	34,420
Jones & Sands	24,560
Dunson & Jeffers	10,240
Cornelias & Knight	32,000
Hill & Cornelias	32,000
W. A. Palmer	32,000
Robert Stewart	6,320
Hotulkee Hajo	32,000

SOUTHERN AND EASTERN BELT.

Oparchewa Pasture Company	10,522
Roly McIntosh	24,050
S. A. Alexander	17,200
Bruner Town	32,000
Grayson, Stidham & Smith	10,240
Smith & Stidham	5,887
McKellop	52,118
W. J. McIntosh	2,152
Ochohunwa	8,640
Willison & Shannon	10,572
Independent Grazing Company	6,007
Freeland McIntosh	10,572
Bruner Pastor	5,962
Porter Pasture Company	32,232
Mingo Pasture Company	25,522
Barber Pasture Company	6,936
Willison & Welden	4,101
Moses Smith	3,872
Welden & Barber	2,319
Pale Childers	25,558
Bob Childers	5,219

	Acres.
Bob Childers	2,044
Daniel Drew	1,234
Robert & Primus	13,143
Ellis Childers	24,479
Tom Scott	4,300
Total acres	1,072,215

By this you discover that sixty-one citizens embraced in this list hold of the public domain of that nation 1,072,215 acres. There are about 15,000 citizens of this tribe. This list does not embrace all the pastures in that tribe, and I am sure that others added to this will increase this number to at least 1,500,000 acres. The public domain of that tribe embraces 3,042,000 acres, so you will see that a few citizens hold at least half of the lands belonging to that people. This list of pastures was made from the records at Okmulgee, the capital of the Creek Nation.

I now desire to call your attention to the parties who hold these large pastures:

	Acres.
A. P. McKellop and N. P. Murphey	4,000
A. P. McKellop and Blackstone	38,000
A. P. McKellop (McKellop, national attorney, clerk house of warriors, national delegate)	20,000
Total	62,000
Grayson, Stidham & Smith (Grayson, member of council, delegate; brother to Sam. Grayson, national treasurer; Stidham, clerk of house of kings, tax collector Eufaula district; George W. Smith, president board of education)	64,000
William Sapulpa (member of council)	17,762
Samuel C. Davis (private secretary of Chief Perryman)	8,151
George B. Perryman	68,170
George B. and Thomas Perryman (George B., brother of Chief Perryman; Thomas, member of council and president of house of warriors)	32,000
Total	100,170
The Bluford Miller Pasture Company (member of council)	10,870
The D. M. Hodges Pasture Company (member of council)	26,920
Bob Daniels (member of council)	2,915
Chissoe and Robinson (Chissoe, member of council; Robinson, member of council and school superintendent)	4,362
The John Buck Pasture Company (John Buck, judge Okmulgee district)	32,000
T. J. Adams (member of council for many years)	32,000
H. C. Reed (member of council)	31,160
George Tiger (member of council)	32,000
Knight Brothers (Thomas Knight, member of council)	34,240
W. A. Palmer (national auditor for several years)	32,000
Robert Stewart (prosecuting attorney Wewoka district)	6,320
Hotulkee Harjo (member of council)	32,000
Parchewa Pasture Company (Parchewa, member of council)	10,522
Rolla McIntosh (speaker of house when pasture law passed; now second chief of the Creeks)	2,405
G. A. Alexander (member of council. He is here now as a delegate)	27,200
W. J. McIntosh (chief justice of supreme court)	2,152
Freeland McIntosh (member of council)	10,572
Porter Pasture Company (member of council when pasture law passed and former national delegate)	31,232
Mingo Pasture Company (member of council and judge of Coweta district)	31,232
Pole Childers (member of council and former delegate)	25,558
Ellis Childers (member of council)	24,479

It has been denied that these pastures were so held that the common *people could not* make their homes upon them, but in fact they are

held as absolutely by these leading men as the lands of any individual in any State are held by him against his neighbors.

I will read you a letter received by Senator Dawes a few days ago:

WAGONER, IND. T., *March 5, 1896.*

Hon. H. DAWES, *Washington, D. C.*

DEAR SIR: I take this as an opportunity of writing to you. You will find inclosed a letter from E. B. Childers in the Muskogee Phœnix. I thought it would probably be of some benefit to you. My dear sir, you must do all you can for us poor devils down here. I am a Creek citizen with seven in family, and can not fence an acre of ground in one of those pastures, for I fenced me up a farm in one, and they cut my wire, and got an injunction in the court at Muscogee, and I haven't got the money to fight it and break the order, and if I go on they will get me for contempt. So you see how we are situated unless you can do something for us. So, for God's sake, try to get something for us.

I will read the letter of Childers to which he refers:

WASHINGTON, *February 20, 1896.*

I arrived at the city of Washington last Sunday all safe and sound. Upon my arrival I found the Indian delegations all stationed at the National Hotel, working heroically against all bills or measures having a tendency to the destruction of Indian nations or their autonomy. The Cherokees have a very strong delegation. The Seminoles have two, and the Creek delegation is here with the exception of David Anderson. Isparhecher is now here at the request of the delegation, accompanied by N. B. Moore. Upon my arrival I found the delegations feeling good over the prospects of their mission. They had the promise of the various committees having the bills in charge which pertained to Indian matters, especially the Committee on Indian Affairs. The Dawes Commission were to be heard and whenever they appear we expect to go before the committee and present our side of the question. They were expected to appear before the committee for a week, but we had no notice, and I suspicioned that some secret movements were on foot, and started in to make close investigation, and through a warm friend here in the city I got on to their plans.

The Dawes Commission held a conference with Secretary Smith in reference to this matter, and Secretary Smith and the Dawes Commission held a conference with the President. This was done in order to get the President's views and formulate a bill that he could approve. Finally, ex-Senater Dawes was delegated to draft a bill that would be in line with the agreement made. The plan to secure the passage of the bill was, that instead of introducing in Congress and let it be referred to the Committee on Indian Affairs, so that all concerned can have a chance to protest, they take the bill to the committee, and the committee was to report the bill as a committee report, and then a strong effort is to be made to rush it through Congress at once. This was all to be done without the knowledge of the Indian delegations, so they have no chance to protest or do anything. It seems very strange and touching to think a powerful Government like the United States would plan and steal a march on a weak, defenseless ward of theirs in order to injure and exterminate them, yet such steps have been taken. The present Congress seems very determined to do something with the Indian nations, and at present matters look very, very gloomy.

I have laid a plan to defeat them in their undertaking and asked the delegates to work to my plans. The Creek and Seminole delegates have agreed to them and the movement is now on foot, and if the Dawes Commission and others interested in the passage of the bill don't catch on we will beat them sure in the House. We are not going to pay any attention to the Senate at all. The Senate will pass anything to do away with the Indian governments. We haven't seen the bill that has been formulated by the Dawes Commission, but I understand that it is not as radical as thought by the people at home, yet it is radical enough. It provides for the appointment of a commission to make a roll of all that are entitled to participate in land and money of the various Indian nations, and allot the lands to the Indians; to lay off town sites and allot the same to Indians at a high value; to extend Federal jurisdiction over the Indian courts; that is, allowing any Indian citizen to appeal from the Indian courts to the United States in the Indian Territory. It also provides that all acts passed by the Indian councils must be approved by the President of the United States before it becomes a law, and contains various other provisions which means the abolishment of Indian courts and the existence of Indian tribes as nations. But I have now great hopes of defeating the bill. In regard to the $400,000 matter, nothing had been done when I arrived, and in fact I was glad that it had not been pushed, for I wanted to work in a way that is likely to win, and I wanted to find out what that was before doing so. I have a transfer on foot, and

have had a bill introduced to allow us to transfer $400,000 of their indebtedness, which I have hopes of being successful.

Upon my arrival here I thought that it wouldn't be necessary for me to stay longer than a month, but I now see that I will have to be here for an indefinite length of time. I can't tell how long, but I will not leave until I win or fail and the Indians go overboard. I have been very kindly treated since I have been here and find that we have plenty of good friends who are glad to serve us in every way possible. I am working to effect something good for the Creeks, if it can be done through these friends.

I would like to write to all my friends in the Creek Nation stating the conditions here in Washington, but time will not permit me to do so. My kindest regards to all my friends and fellow citizens.

Very respectfully, E. B. CHILDERS.

This is a kind-hearted man who has profound regard for the "poor full-blood" in his country, but his sympathy may be in a manner accounted for in the fact that he holds a pasture of 24,479 acres of their lands on which he receives $6,000 a year rents. His father, Pole Childers, holds 25,558 acres on which he receives $6,000 a year rents, making in all held by father and son, 50,037 acres, with $12,000 rents. He has profound reason for his patriotism.

I will now give you a partial list of rents as reported to me which these land barons receive annually:

Perrymans	$25,000	Willison, Welden & Co	$3,000
Turner & Porter	16,000	Robinson & Chissoe	2,000
Childers	6,000	Bob Childers	800
Childers	6,000		
Childers	3,000	Total	61,800

These amount to $61,800 and I have a letter which places the entire amount of rents received by these large landholders at $100,000 a year, all of which we insist belongs to the common people of that nation; and we further insist that this money should be cared for and paid to these people, many of whom are in destitute circumstances. It has been said that we are opposed to any man accumulating wealth. We answer that we are opposed to anyone accumulating wealth as these men are doing, at the expense of the common people. We insist that it is not right that these men should grow rich on the proceeds of the property of the common people while they are destitute and in want.

I have a letter from a business man in Wagoner, a town in the Creek Nation, from which I wish to read, and which will throw some light upon the manner in which rents of these pastures are disposed of:

I have been on the go for the last thirty days. Have not written you, but see your letter to Mr. Wallace. I don't fully understand who you mean when you say cow men are opposing the passage of the Flynn bill. I know the men who own the cattle would rather pay the rents they are now paying where the Creek Nation would get the whole of the money. Under existing laws here the pasture owner, who is supposed to be a Creek Indian, will get, say, $5,000 to $6,000 per year for a pasture, and he agrees to pay the Creek Nation 5 cents per acre each year, which but few of them do. The men who occupy the pastures are white men, but they pay for pasture privileges here more than $100,000 annually, besides large amounts of money for winter feed. There are a few Indians (half-breeds) that get all this pasture rent, but they own no cattle; if they do they let them run on the public domain. I assure you the white men who own the cattle and pay that heavy pasture rent are in favor of the Flynn bill, or all that I have seen, and you know I see the most of them. And another reason I have for seeing the Flynn bill pass is this: I, as a trader, am compelled to buy their warrants that are given to their standing officers, school teachers, support of schools, and all debts the nation owes. They have no money, but pay in warrants on the National Treasurer. The nation gets no revenue. The tax collectors—but few of them turn anything over to the nation. They are entitled to from 25 per cent to 50 per cent for collecting, and often make no report of their collection.

Should the Flynn bill pass and the revenue all be paid where it would be properly handled, it would pay off this accumulated indebtedness and enable them to continue their schools. Unless something is done I don't see how they can keep up much longer. Last payment they only paid 12 per cent on general warrants and 46 per cent on school warrants. They take the money to send delegates to Washington, or anything of that kind. They will hold just enough to keep them going and let their debt accumulate.

I think the sooner the change is made the better for nearly all the Indians and all the whites. The most of the Indians I see, except politicians, don't care how soon the change is made.

You will see from this that the collector gets one-half of the 5 cents per acre which these parties claim they pay to the Government—that is, 2½ cents. I have not yet run down the other 2½ cents to ascertain how much of it, if any, ever reaches the Treasury. Should it run the gauntlet and succeed in making its way into the National Treasury, I imagine, however, that it would sit down, draw a long breath, and congratulate itself upon its narrow escape.

Mr. FLYNN. Can you state how many acres of the Creek lands are held by John F. Brown, governor of the Seminoles?

Mr. MCKENNON. I can not. I understand he has large holdings in the Creek Nation; but I do not know the number of acres.

Mr. FLYNN. I understand 40,000 acres.

Mr. MCKENNON. That may be so. I only know that it is said he has large pastures in that nation. The list I have given is only a partial list. I am not able to give names of other pastures and the number of acres embraced in them.

I will now read from a letter written to Judge Little by an intelligent intermarried citizen at Muskogee:

Full jurisdiction in all civil and criminal cases in the Indian Territory between all persons of any blood or kindred ought to be conferred upon the United States courts now established in the Territory. To do this would do away with the so-called courts of the Indian nations, but they are so manifestly an evil that their suspension would be very generally approved. The administration of "justice" by the Indian courts is a menace to the liberties and property of the people, as they have been conducted during the past ten years. Some of the most notorious scoundrels of the Territory occupy the highest judicial positions, acquiring and holding same through their "usefulness" to those who place them in power.

Not a member of this commission ever heard any individual, red, white, or black, in that Territory, deny the charges of corruption in every department of those tribal governments, including the courts, where such charges are constantly made in public prints and discussed by individuals publicly and privately. I have myself discussed these matters in public speeches in all the tribes except the Seminole, and no one ever questioned my declarations there in regard to them.

Mr. Chairman, I have read to you a large petition from the citizens of the Cherokee Nation asking that their lands be released by these large holders, but we have no petition here from the Creek Nation. I want to show you why. I read a section from the Creek statute of 1872:

Be it further enacted, That no citizen of this nation shall exercise the power of petitioning any foreign power upon any question when such petition shall be in its nature subversive to the laws and constitution of this nation; and any citizen who shall be found guilty of violating the above law shall receive 50 lashes upon the bare back.

The Creek citizen can not afford to take the chances of this severe punishment by asking this Government to wrest from the hands of his

educated and powerful brethren their large holdings of lands and to restore it to them for homes.

I now desire to call your attention to some startling facts showing the corruption of the national council of the Choctaw Nation. I hold in my hand a certified copy of a bill which passed the Choctaw council and was approved by Governor Wilson N. Jones January 27, 1894. This bill undertakes to authorize the construction of a railroad called the Choctaw and Chickasaw National Railroad, from a point near Fort Smith, on the eastern border of the Choctaw Nation, through the Choctaw and Chickasaw nations, to a point between the towns of Duncan and Chickasha, on the western border of the Chickasaw Nation. It also provides for a branch road leaving the main line at or near the line between the Choctaw and Chickasaw nations and running to a point on the Red River, north of Grayson County, Tex. It provides that this company, in addition to liberal provisions for the right of way, shall have alternate sections of land on each side of the road for a distance of 6 miles, equivalent to a solid belt of land 6 miles wide running the whole distance through these two nations. It is intended that this line shall run over the richest coal lands belonging to those people, taking in also valuable iron and manganese deposits on the main line. The branch road is intended to take in almost the finest deposit of asphaltum in the world, sufficient in quantity, it is said, to pave the streets of all the cities of the United States. It is known to be 80 feet wide and 80 feet deep, running for a long distance in the Chickasaw Nation. The property thus intended to be given to this company, I am confident, would be worth not less than $10,000,000.

Now let me show you how the passage of this bill through the Choctaw council was procured. Capitalists of Kansas City, Mo., entered into agreement with certain parties in the Choctaw Nation, Dr. E. N. Wright, Mike Conlan, and H. Y. McBride, by which they were to and did furnish to these parties large amounts of money with which to buy up the governor and members of the council of the Choctaw Nation to pass this bill just as they did pass it. The money was furnished and was paid to the members of the council, and I here give the name of each individual and the amount he received.

Mr. WHITE. Will you please state how you got this information?

Mr. MCKENNON. Yes, with pleasure. While in the Territory in 1894, immediately after the passage of this bill, a member of the council stated to the Commission the particulars of this transaction, admitting that he received $300, for which he said he agreed to vote for the passage of the bill, but that nothing was said about his doing anything more, and that when the next council convened he would vote to repeal it. He then gave me a partial list of the names of the members of the council and the amounts they received, and from him and others I learned that this was true, and that in addition to the money paid there was a written agreement or contract given to each member of the council in which the company bound itself to convey to the member holding the instrument the number of acres mentioned therein as soon as the company obtained title to the lands. There has been recently instituted by these Kansas City capitalists a suit in the United States court in Atoka, in the Choctaw Nation, against these three parties for $37,000, which it is claimed they did not disburse according to agreement between the parties, but which they charge was embezzled by them. The attorney prosecuting this suit laid before me the original correspondence between these parties in the Choctaw Nation and Kansas City, from which I copied the letters and receipts I here present, as also

the full list of members who received the money and the amounts they received. I now give you the list:

John Harrison	$1,000.00	John Wilson	$1,000.00
Charles Vinson	500.00	Davis Bell	362.50
John Pulcher	750.00	B. Wade	300.00
Jerry Folsom	1,000.00	S. E. Lewis	250.00
M. V. Everidge	500.00	Thomas D. Ainsworth	500.00
Joe Bryant	500.00	A. Pursley	500.00
Robert Frazier	500.00	S. Belvin	100.00
Cornelius Jones	500.00	Joe McClure	200.00
L. Hancock	500.00	B. Byington	20.00
William Harrison	350.00	G. H. Dukes	250.00
Will. Durant	500.00	J. B. Jester	250.00
Joe Coley	500.00		

Charles Vinson, who received $500, was at the time speaker of the house of representatives. Jerry Folsom, who received $1,000, was president of the senate of the last council of the Choctaw Nation. Joe Bryant, who received $500, was in 1874 superintendent of public instruction of the nation. G. H. Dukes, who received $250, was judge of the district or circuit court, I am not certain which. All these were members of the council at the time, and these amounts were paid to them for their votes favoring the passage of the bill, besides the contract for conveyance of lands as before stated. Governor Jones received one of these contracts for 10,000 acres of land. After the bill was passed, Green McCurtain, who opposed its passage, and who was at the time national delegate, was leaving the capitol when one of these parties handed him a contract of conveyance of 5,000 acres, which he retained and used in his communications to the Secretary of the Interior to secure the defeat of the measure.

I now read to you a number of letters and receipts which passed between these parties in the Territory and their friends in Kansas City, which will give you a better idea of the nature and extent of this transaction:

AMERICAN NATIONAL BANK,
Fort Smith, Ark., April 5, 1894.

Pay to the order of American National Bank $3,162.50, thirty-one hundred sixty-two $\frac{50}{100}$ dollars, value received, and charge to account, with exchange, of

MIKE CONLAN.

To NEWTON B. CHILDS, *Kansas City, Mo.*

DENISON, TEX., *Sept. 26, 1894.*

Received of S. F. Scott fifteen thousand dollars ($15,000), to be returned to him at once, provided favorable bill is not passed by Chickasaw Nation this term.

H. Y. MCBRIDE.

OFFICE OF NATIONAL AGENT, CHOCTAW NATION,
Indian Territory, June 8, 1893.

DEAR SIR: Green McCurtain called on me to-day. He has the money deposited in subtreasury in St. Louis to his credit, but can't say just what we will do until after we have a conference with the governor next Monday. Will let you know everything working along. The 500 did not get us even. Two parties here now requesting money. Have none and am trying to put them off, which I hate to do, as it requires that much more labor. We must square up old scores to be able to begin anew and in the proper course.

Yours, truly,

E. N. WRIGHT.

NEWTON B. CHILDS, Esq.

HOTEL ADAMS, MUSCOGEE, IND. T., *July 7, 1894.*

DEAR SIRS: Please see that everything in the way of finances is on hand at Tishomingo to carry our point if needed. Take no chances. Attorneys urge action. If action questioned, it can be corrected next September at regular session. After Wednesday noon I expect to be in Fort Smith.

Yours, truly,

E. N. WRIGHT, *President.*

NEWTON B. CHILDS and S. F. SCOTT, Esqs.

TUSHKAHOMA, IND. T., *October 25, 1895.*

DEAR SIR: Yours 23d instant received, and in reply will state that, as to the matter you speak of, that I do not quite understand what you are driving at. As to any services that was used in the railroad matters I think you know about, and I am certain every dollar can be accounted for except the last $18,000, which was disposed of by other parties, $300 of which was mine, besides something like $500 out of the $1,500 I advanced Scott. I have not been able to see much of the other two parties, but think they will meet you all in court, and, if I am compelled to, I guess I will, also. I am as anxious as you all are to get this matter in some shape, and want to know where my money went to. It seems a shame that out of the $50,000 or $60,000 spent, nothing can be accounted for except the passage of the bill through the Choctaw council, a full statement of which we hold; at least you were furnished with the amount, so I am told; as to the power of attorneys and papers signed by me, I have. Please notify me when this case is coming up. Perhaps it will help me to get some of my money back, at which time, if I am indebted to you, will pay you. It is very kind of you to notify me in such a friendly manner that you are bringing suit against me, and I appreciate it. I hope you will make Conlan account for the money. He told me, when I asked him about it, that he will gladly furnish full information when required to, so I don't think there will be any trouble about it. Write me here, as I am a member of council and will not get home until some time in November.

Very truly,

E. N WRIGHT.

NEWTON B. CHILDS, Esq.

ATOKA, IND. T., *November 19, 1895.*

DEAR SIR: Mr. Scott, the lawyer employed by yourself and Childs, is here to file a suit presumably against Conlan, McBride, and myself, but I take it against myself personally. I have just had a talk with him, and I must say this is the first time I have ever been informed by anyone that you or Childs doubted that the money was spent according to agreement in the Choctaw council. Now, I had supervision of that part of the deal, and, as far as you and Childs were concerned, you have always stated to me that you were satisfied, until now. Now, in justice to me, I think you should give me a chance to meet you both, and let us go over the matter together, and I believe we can come to an agreement. Now, from the nature of this suit and the way it is brought, it is nothing more or less than a blackmailing case, and, as I told Scott, I never would believe that you were a party to the suit unless you told me in person that you ordered it. In bringing this suit, it affects no one but myself, and if you all were not satisfied with it you should tell me so, at least. It has nothing whatever to do with the $18,000 that was made away with. Now, I asked Scott not to file this suit until you received my letter and I had a reply from you. Now, wire me as soon as you receive this, or write me. I will be glad to meet you and Childs in the matter, and if you wish I will come to Kansas City or Excelsior, but it would be only fair for you all to pay half of my expenses for going, or I will meet you all in Fort Smith. Let me hear as soon as you can. I am anxious to have this other suit brought, as I am needing my money. Scott can tell you all I had to say to him in the matter, and how I feel personally about it. Write me fully about this.

Yours, very truly,

E. N. WRIGHT.

Col. S. F. SCOTT.

P. S.—Why would it not be better to meet in Parsons, Kans.?

ATOKA, IND. T., *January 10, 1894.*

DEAR SIR: The Choctaw special will not be held until January 22, as we could not get ready before that time. I have just returned from the Chickasaw country, and everything is in good shape there, and so soon as we get through at Tushkahoma we will hit them hard. Let me know how things are with the other end. Regards to Mrs. Childs; also Scott and the "push."

Yours, very truly,

MIKE CONLAN.

N. B. CHILDS, *Kansas City, Mo.*

TUSHKAHOMA, IND. T., *June 29, 1893.*

DEAR SIR: If you can, pray have the business start at once, for your friends need it. We are having a fight to a finish. McCurtain went back on us, but we have him in a corner, and he said to-day he would resign. The governor is true blue, and with us, so I must wait until the end before I can tell you anything, but make up your mind that if things do not come our way the others will have a long, hard road to travel. Do not think anything will be done this week.

Yours, very truly,

MIKE CONLAN.

NEWTON B. CHILDS, *Kansas City, Mo.*

ATOKA, IND. T., *September 11, 1894.*

FRIEND CHILDS: Inclose you a letter from Ludgate. I will go out this morning and see him. Hope things will get in shape at your end this week, as the council is now ready to do business, and I ought to be there by next Monday, at the outside. Keep me posted.

Ever yours,

MIKE.

ATOKA, IND. T., *September 13, 1894.*

FRIEND CHILDS: Inclosed find notice of H. H. C. & Co., and I told the men that they would be paid every Saturday, so please send some to-morrow, and write me what you people are doing about the other business, as I am still in the dark, and would like very much to know whether anything can be done. This end is in good shape, and I am only waiting for you, and I do not think it would be safe to put it off too long. I keep thoroughly posted on what they are doing, but can't tell whether they will hold longer than October 1 or not.

Yours,

MIKE.

N. B. CHILDS, *Kansas City, Mo.*

ATOKA, IND. T., *September 29, 1894.*

DEAR SIR: The deal is dead for this council. The full-bloods all went back on Mike, and would not do anything. The opposition were all posted, and were there in full force and had money. Mike still out in the country. As soon as he gets in will make a full report in Kansas City. Criner and the governor were with us. I leave to-day for court. Will be away several days.

Yours,

H. Y. MCBRIDE.

Col. SAM. SCOTT, *Denison, Tex.*

FORT SMITH, ARK., *April 2, 1894.*

I hereby authorize and empower Mr. Michael Conlan to draw drafts on me for amounts not to exceed $2,500 at any one time, if audited and marked approved by Clayton and Brizzolara, attorneys, and I hereby guarantee payment of the same. Drafts to be drawn at sixty days' sight, without grace.

NEWTON B. CHILDS.

AMERICAN NATIONAL BANK, *Fort Smith, Ark.*

FORT SMITH, ARK., *April 5, 1894.*

DEAR SIR: Your telegram received, and we forwarded drafts to-night through National Bank of Kansas City. Mr. Conlan telegraphed for the $2,500 from Tushkahoma, and to get him to draw draft and to insure safety, I started on the night train for Tushkahoma, and was there when the council adjourned next day. The boys have had a hard fight on hand, and maneuvered it very successfully. I have paid them $3,160 more, which they needed to square up. I have forwarded draft for this amount through National Bank of Kansas City also. Dr. Wright and Mr. Conlan will start for Kansas City to-night and will explain all.

Yours, truly,

FRED. TITGEN, *Cashier.*

NEWTON B. CHILDS, Esq., *Kansas City, Mo.*

FORT SMITH, ARK., *April 23, 1894.*

DEAR SIR: This morning Dr. Wright came in from Tishomingo, and he reports the outlook very flattering. He did not think an arrangement for funds via Ardmore necessary, as he already had made an arrangement which was better suited to the locality, and which he would explain in his letter to you to-day. I had already written the Ardmore Bank, as per agreement, but, upon Dr. Wright's instructions, will let the matter rest.

Hoping for a speedy and successful termination of matters at issue, I am, truly,

Yours,

FRED. TITGEN, *Cashier.*

Col. NEWTON B. CHILDS, *Kansas City, Mo.*

FORT SMITH, ARK., *January 27, 1894.*

Received of Newton B. Childs, esq., one package said to contain one thousand dollars, addressed to Mike Conlan, Tushkahoma, Ind. T., by the American National Bank.

MIKE CONLAN.

FORT SMITH, ARK., *January 27, 1894.*

Received of Newton B. Childs, esq., two thousand seven hundred and fifty dollars in U. S. currency.

MIKE CONLAN.

AMERICAN NATIONAL BANK,
Fort Smith, Ark., April 3, 1894.

At six days' sight, without grace, pay to the order of American National Bank ($2,500.00) twenty-five hundred dollars value received, and charge to account of, with exchange.

MIKE CONLAN.

To NEWTON B. CHILDS, *Kansas City, Mo.*

KANSAS CITY, MO., *May 5, 1894.*

Received from Newton B. Childs (chairman) three hundred dollars account ex. Davis & Conlan to Tishomingo.

$300.

MIKE CONLAN.

KANSAS CITY, *April 7, 1894.*

Received from Newton B. Childs two hundred dollars, account R. R. deal.

$200.

MIKE CONLAN.

KANSAS CITY, *May 14, 1894.*

Received from Newton B. Childs eight hundred dollars, account R. R. expenses.
$800.

MIKE CONLAN.

JUNE 29, 1894.

Received from N. B. Childs fifty dollars, account of R. R. deal ex.
$50.

E. N. WRIGHT.

As soon as Major Kidd, who was then a member of the Commission, and I ascertained these facts, we, in our addresses to the people of the Choctaw and Chickasaw tribes, stated the particulars of this attempted robbery by their national council. The first time I ever spoke of it publicly was at Hartshorn. There were in the audience three members of that council; and after stating the particulars of the transaction and denouncing it severely, I stated that there were members of that council in the audience who accepted these bribes, and if they wished to deny anything I had said and any one of them would stand up, I would tell him how much he got. They did not respond, and afterwards one of them said to me, "You gave us some pretty heavy jolts." I said, "Yes, but I did not give you a lick amiss." He then said, "I don't deny that I got some of that money." I asked him how much he got, and he said, "Enough to help me along right nicely." I replied, "You got $500." He responded, "How did you know that?"

Once in an interview through an interpreter with a number of full-blood Indians in the Chickasaw Nation, I gave them the particulars of what this bill proposed to do and the manner in which it had been passed through the Choctaw council, and stated to them that efforts were going to be made to pass it through the Chickasaw council in like manner. When they came to understand it they said that if their council undertook to pass that bill and thus rob them of that property, they would repeal it with their Winchesters.

One of the letters I read to you states that the opposition were present at the Chickasaw council with plenty of money, and thus defeated its passage. I say that they had no money with which to defeat it and no money was used; but my belief is that it was the influence of the Winchester which prevented its passage.

Mr. COLBERT (Chickasaw delegate). You are mistaken; I was a member of that council and I did not see a Winchester on the ground.

Mr. MCKENNON. Mr. Colbert, you were not a member of that council; you came in since that time.

Mr. COLBERT. Yes; I understand now.

Mr. MCKENNON. Mr. Chairman, I desire to say here that I know Governor Mosely and I believe him to be an honorable man. I know Mr. Colbert, and he is an honorable gentleman. I believe that the present members of the National Council of the Chickasaw Nation are honorable, but the administration which preceded it was beyond all question wretchedly corrupt.

The CHAIRMAN. Judge McKennon, it is now 12 o'clock, and you will have to suspend your remarks and we will hear you further to-morrow.

Mr. MCKENNON. Mr. Chairman, I regret that I am taking so much of the valuable time of your committee, but since these matters have been questioned I felt that it was my duty to lay these facts, which in my estimation were so important, fully before this committee.

The CHAIRMAN. They are important, and we desire to be fully informed and wish you to take such time as you may desire to present them in full.

FRIDAY, *March 20, 1896.*

The committee met at 10 a.m., Hon. James S. Sherman, presiding.

STATEMENT OF MR. A. S. M'KENNON—Continued.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: When I concluded yesterday, I was endeavoring to show some of the methods used in the Choctaw Nation in getting the railroad bill through the council. I believe I have stated everything in regard to the Choctaw Nation that I desire to say, and now I want to make a statement as to what I understood in reference to the transaction as to the Chickasaw council, and the manner in which they made and unmade governors for the purpose of passing this bill. I may not be correct in the particulars, but I will state it as it was told to me. Governor Wolfe is not very well informed, but he is an honest man.

Mr. FLYNN. He is a full blood?

Mr. MCKENNON. Yes, sir. It is well known that he could not be used for such purposes, and they proceeded to get indictments against him. They said to him, "You can not be governor while you have an indictment pending against you, and you will have to turn this matter over to Nelson Chigley," who was president of the senate. And so they brought in Nelson Chigley, and Wolfe turned the office over, as they termed it, to Chigley as governor. Afterwards they got Chigley over in Gainesville, Tex., got him intoxicated, and made a contract with him to call the legislature together; but when he got back and was straight he refused to do so. He is an honest man, and whether he did it from fear, or whether it was because he did not wish to, I can not say. They then said to Chigley, "These indictments against old man Wolfe do not amount to anything, and you can not be governor," and got him to turn the office back to the old man again.

As soon as Chigley turned the office over to Wolfe, they told the old man that he could not be governor with the indictments pending against him, so he turned it over to Tecumseh McClure, speaker of the house of representatives, who was sworn in and called the legislature. They had previously "arranged" with Tecumseh. When it met, for some reason which I can not state, they did nothing the first day. It is supposed that influences heretofore mentioned caused this delay. The question of the legality of the call was raised and discussed during one day. Some influence was brought to bear during the night, and the next morning there was not a quorum present and they adjourned to another day, and never did meet again. They never could handle the next council; so it was defeated, and that was the end of it.

These statements may not be entirely correct in all particulars, but in all essential features they are substantially true. The effort was made and governors were made and unmade in the interest of the scheme.

The western part of the Chickasaw Nation is the richest portion of all that country, and the lands are almost entirely in the hands of white people held under leases from the citizens of the Chickasaw Nation. The lands are not pastured as they are in the Creek Nation and a portion of the Cherokee Nation, but are inclosed in farms. It is a fine farming country. In the Chickasaw Nation, as in every other nation, these lessees hold the lands against the citizens of that country as absolutely as you hold your lands against all others. The Chickasaw Nation has only about 4,000 Indian citizens, and that government is absolutely *powerless to* wrest these lands from the grasp of these people and *restore them to* the common people. It therefore becomes necessary

for the Government to interpose for the relief of these people. These lands should be allowed to the citizens, who could rent them to white people and live comfortably from the rents.

As I stated on a former occasion, my conviction is that Governor Mosley is an upright, honorable gentleman, and that the present council of that nation is composed of men who propose to do right, and the disposition of these people has been reflected in the character of the argument of their attorney before you. They are conservative and reasonable, and, I think, seek to do right.

The condition of the government is such as I have depicted before you this morning. In the Choctaw Nation the monopoly of lands does not exist to such an extent as in the other nations. There are only two persons who have large holdings. McAllister is said to have 30,000 acres in one pasture, and Governor Jones is said to have 7 miles. I do not know whether it is 7 miles both ways or not. He was governor at the time this bill was passed and signed. He had liberal views on the question of lands. He only had a contract for 10,000 acres in case the railroad company got title to it.

Mr. PENDLETON. Is he a fullblood?

Mr. MCKENNON. Yes; and does not talk English very well.

Mr. FLYNN. If he did he would have all the land.

Mr. S. W. PEEL. He is not a fullblood.

Mr. MCKENNON. He looks like one. He does not speak the English language very well. I want to repeat what Green McCurtin said in a speech at Hartshorn. He said that some people claimed that the common people in Indian Territory were in good condition and happy and not destitute. He described the condition of the fullbloods. He said that formerly they had herds of ponies and cattle and plenty of pasture, and by means of what they raised the life of the fullblood was made easy. They had these herds to sell from, and every family was in easy circumstances; but it is not so now. The public domain has been fenced off until the full-blood Indian has been deprived of his land. While everything appears to be prosperous, and magnificent houses are all around him, one looks at these magnificent farms which are held by the white people, while the Indian sits in front of his cabin with a bushy-tailed pony larietted to a post.

The next thing to which I wish to call attention is the holding of coal lands in the Choctaw Nation, and almost everything else of any value, but especially the coal lands. There are citizens there who are holding large tracts of these coal lands, and who are receiving in royalties from them immense sums of money—enough to run any one of these governments, properly and economically administered. We think these royalties belong to the common people. No one man has a right to hold and use the proceeds and profits or land which belongs to the common people. There was one little man here during the early part of these hearings, and I am sorry he is not present now. He has been maneuvering in this thing; he is a modest man, and only claims 50 miles of coal lands in the Choctaw Nation.

Mr. FLYNN. Is he an Indian?

Mr. MCKENNON. No; he is as white as you are.

Mr. FLYNN. What is his name?

Mr. MCKENNON. Dr. Haley. He says he favors a change; but this bill is too radical.

Mr. PENDLETON. He is in favor of vested rights?

Mr. MCKENNON. Yes, sir. He and others like him claim that they have honestly *invested money in these* royalties; but for every dollar *invested they have received one* hundred dollars. They have not been

called upon to invest any of their money. All they have to do is to put the lands in the hands of a company, who will furnish the means and operate the mines, and they receive the profits.

Mr. FLYNN. In the event allotment were made, what would be the portion of each Indian in the Choctaw and Chickasaw nations?

Mr. MCKENNON. About 700 acres.

Mr. FLYNN. State the amount of royalties paid to individuals.

Mr. MCKENNON. A statement was made by the former collector of the Choctaw Nation, in which he said that $125,000 in royalties was paid to the nation and $65,000 to 39 individuals in 1894. I believe I have now gone over the ground as far as necessary. I did not, however, go as fully into details of the conduct of the Creek council as I intended, because I was pressed for time, or felt so, at least; but I think that all you need to understand is simply the fact that the council, when assembled, sat down deliberately and planned to place within the control of themselves and a few favorites at least a million and a half acres, or one-half of the domain of that people, which they absolutely hold from them, and for which they pretend to pay as rent the small and insignificant sum of five cents per acre, very little of which, as I have shown, ever gets into the National Treasury.

As to the Cherokee Nation, it has been said here that the intruders were inviting a great many people into the country, holding out inducements to them to go and acquire rights as citizens of that nation.

I call attention to the fact that Cherokee lawyers have been doing that, until recently our Government took the matter in hand, and the United States court at Fort Smith sent a number of them to the penitentiary. There was one man they did not send, and he was one of the original workers who has done a little more than anybody else. That man was Hooley Bell, who proved to be too big for the Cherokee government to tackle, as was shown when he went out and collected the Strip lease money, and said that he collected as much as $11,000 and never paid over a farthing, and they never prosecuted him for it. That government is powerless to handle Hooley Bell.

We have been asked about white children attending the Indian schools of these nations. We have understood that in some localities the citizens were liberal and some white children were permitted to attend the schools; but that has been done to a very limited extent, and really does not amount to anything. It is only in a few instances that it has been permitted.

Mr. FLYNN. You have not stated anything about the Seminoles. Did you go over there?

Mr. MCKENNON. Yes; I visited and addressed the Seminole council in April, 1894. That nation is governed by John F. Brown, who is governor, and his brother is treasurer, and they generally control everything.

Mr. FLYNN. Did you notice my amendment?

Mr. MCKENNON. Yes; I think it is correct, and ought to be made. I intended to speak of the payments in the Chickasaw Nation. The money, as I have been often told, was taken down and deposited in a bank in Denison, Tex., and after that, persons went around and told the citizens that their claims were worth only about $60 or $70, and bought them for so much, when they were really worth $130. There is general complaint, and there is no doubt but that in those payments the people have been outrageously swindled, and that the Cherokee payment was a disgrace to civilization.

Mr. CURTIS. How do they pay, by draft on St. Louis, or is the claim sent through a Denison bank, or is it by check on Denison?

Mr. McKENNON. I do not remember.

Mr. MONTGOMERY. Checks are given on individual banks.

Mr. McKENNON. I know that complaints came from all classes about the manner in which these payments were made, and that several men made large fortunes out of them. Like complaints were made as to the Cherokee payment, and the Government ought not to permit payments of that character to be made in any of those tribes. It is the duty of the Government to interpose and to see that the payments are made in a decent way, so that they will not corrupt the people, as has been the case heretofore, and that each individual gets the money to which he is entitled.

Mr. FLYNN. In the Seminole Nation Brown issues his own money?

Mr. McKENNON. Brown, as I understand, simply issues what he calls a due bill, payable in merchandise at the company stores run by his brother and himself. They control the mercantile business of that nation, and when the treasurer receives the money he appropriates it to the payment of the due bills.

Mr. FLYNN. State about the kind of council house they have in the Seminole Nation.

Mr. McKENNON. One other matter first: The people of these tribes in discussing this tell of the way in which they have been treated, and the way in which their governments are run and the property handled.

In my speeches to them I stated that it would be wiser if their leading men would join us in bringing about the change; that it could be done better than by legislation. In various instances these people have come to us afterwards and said: "If you intend to allow our leading men to control this thing we do not want anything to do with it; they have robbed us of about all we have had, and they will rob us of our land. We are perfectly willing for you or any commission of the Government to attend to it, but we do not want them to do it."

As to the council house in the Seminole Nation, of which you make inquiry: It is simply a cheap wooden building. I do not believe the rooms are as large as this committee room.

Mr. FLYNN. Is it not a fact that they built a large two-story stone building as a council house, and that it is now occupied by Brown, while the council meets in this frame shed?

Mr. McKENNON. I do not know.

Mr. FLYNN. Were you at Brown's house?

Mr. McKENNON. I was not.

Mr. FLYNN. It is as nice a house as any in Washington.

Mr. McKENNON. There is a large class of freedmen living in the Chickasaw Nation. Their status is not well defined, and they are in that condition that something ought to be done for them. Whatever bill is passed should consider them. Hon. R. V. Belt, their attorney suggests that whatever commission goes there should look into the condition of these freedmen, and make a careful report as to their condition and their relation to the Chickasaw Nation, under their laws and the treaties between that nation and the United States, and report same to the Secretary of the Interior with recommendations, which he in turn should report to Congress with his recommendations. This is as little as could be done for those people. They are good and deserving people and I was much impressed with the appearance of delegations of them whom I met, and the sentiments of love and care they expressed for their families, and the rearing and education of their children. Due consideration should be given them, as also the Choctaw freedmen, but not as against the rights of the Indians.

Mr. CURTIS. In other words, you think the Government ought to

compel the Indians to carry out the stipulations of the treaties with them?

Mr. McKENNON. Yes, sir.

Mr. FLYNN. Have you read Mr. Curtis's bill? There is a provision in it about that.

Mr. McKENNON. Yes; I suggested the same provision for the bill under consideration. Mr. Belt gave it to me, and I believe I handed it to Judge Little.

Mr. Chairman, I thank you and the members of your committee for the patient hearing given me and will consume no more of your time.

STATEMENT OF HON. HENRY L. DAWES.

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: There is one provision in this bill which I think, perhaps, I should speak of, rather than any other member of the Commission. I allude to the provision in the bill with reference to further work for this Commission. It has been suggested to this committee that probably this Commission would like to continue its work; that it is on a salary, and it would be natural for them to desire to continue it, and therefore they have endeavored to provide for themselves. I want to call your attention to the report of this Commission and to what they recommend in their report. You will see that their recommendations had no reference whatever to any further work for this Commission. They had concluded the work given to them and did it as well as they knew how.

When they came here and were asked to aid in the preparation of measures, further work of that kind seemed to the executive department of this Government absolutely necessary, and the executive department thought that some commission of some kind should be appointed to carry it out, and it was the provision of the executive department and not of this Commission.

I want to say, further, in reference to my associates, that for reasons obvious to you I have less interest in any matter that may be further committed to this Commission than any other man. I had retired to private life of my own accord, and I had intended to remain there, and had no idea of ever having any occasion to change my mind. When I was called by the President of the United States—not belonging to his political affiliation at all—and was asked if I would not consent to join this Commission and do what I could to help carry out the idea of persuading these people to change their relations, the President of the United States was kind enough to say to me that if they would not listen to me they would not listen to anybody. I did not feel at liberty under those circumstances to decline, and I found myself drawn from my retirement into this work. This work is concluded, and I have no desire and do not expect to take any further work, for reasons which I need not suggest. Therefore, I have no interest at all in this matter.

I want to say that I have been connected in public life with a great many men. I am not one of those who believe that the public men of this country are bad men. I believe they are faithful and honest; and I have never been associated with public men who have been more faithful in the discharge of their duties than these associates of mine on this Commission. With an eye single to the object and the trust for which they were appointed, and with a devotion to that interest which has filled me with satisfaction and admiration, I felt that I wanted to *say that* much to this committee in their behalf, because they know *very well I* have no further interest in this work. If this work is to be

committed to anybody, no selection of new men could bring to this work the wisdom and the experience, not to speak of the honesty and kindness of purpose toward all those people, that these men can. And I want to say that it is not from them that this request comes for the continuance of their duties, as provided for in this bill.

It is appropriate for me to make this remark in view of the fact that it has been charged that they were providing places and continuing their salaries. These men do not have to depend on these positions for their livelihood, whatever may be said of me. It is not a very pleasant life, nor a pleasant duty. It is a pretty hard thing to deal with the character of men who refuse to see what is the best thing for them, and to see what they ought to do; and to deal with men who do not know when propositions are presented to them that those propositions are for their best interests. It is a hard duty, and one with which I have had a good deal to do in the last fifteen years. The worst feature of the Indian service is that the Indian sometimes does not know what is best for him; and when he does know, ten chances to one he listens to the wrong man.

This is the condition of things which has been dividing those people, and whether this provision in this bill should devolve upon these gentlemen or somebody else is a matter of the smallest possible consequence. There are great questions connected with this matter which rise above all these considerations; and whether the work be given to these gentlemen or to new men is not worth a farthing; but it is due to these gentlemen that someone who knows how faithful they have been should state that this does not spring from a desire of theirs.

The CHAIRMAN. I am glad to have you make these remarks, and I am sure that I voice the sentiment of the members of the committee when I say that they coincide with everything you have said, and we are greatly obliged for your very full and fair statement.

Mr. CURTIS. I will state on behalf of the committee, and I think I can speak for them when I say that the complaints made against the Commission were not very well received by this committee.

Mr. MCKENNON. We of course feel and appreciate the honor we have enjoyed in being associated with the distinguished gentleman (Mr. Dawes), one of the purest and best of America's statesmen.

Adjourned.

Senate Document No. 12.—54th Congress, 1st Session.

REPORT OF THE COMMISSION APPOINTED TO NEGOTIATE WITH THE FIVE CIVILIZED TRIBES OF INDIANS, KNOWN AS THE DAWES COMMISSION.

REPORT.

FORT SMITH, ARK., *November 18, 1895.*

SIR: The Commission to the Five Civilized Tribes hereby report what progress has thus far been made in the work intrusted to them since their last report.

Since that report the Commission has undergone some changes in its composition. Mr. Frank C. Armstrong has been appointed in the place of Meredith H. Kidd, transferred to other service, and under the provisions of the act making appropriations for the Indian service for the year ending June 30, 1896, Mr. Thomas B. Cabaniss and Mr. Alexander B. Montgomery have been added to the Commission and Mr. Allen R. Boyd made its secretary.

Immediately upon this reorganization, and after conference with the Honorable Secretary of the Interior in Washington, the Commission repaired without delay to the Territory for the purpose of continuing the negotiations heretofore intrusted to them, in conformity with the instructions under which they were acting.

In anticipation of their arrival in the Territory they caused letters to be addressed to the chiefs of the Cherokee and Creek nations, informing them of the intention of the Commission to renew the negotiations heretofore pending, and that upon the date named they would be at Muscogee, in the Creek Nation, and would be pleased to be notified upon arrival there at what time and place it would be agreeable for them to meet the Commission, either in person or by others duly authorized by them or their governments to act, and renew negotiations which might lead to an agreement in regard to the objects of our mission.

To these letters the Commission received the following replies from the chief of the Cherokee Nation and the chief of the Creek Nation, respectively:

TAHLEQUAH, I. T., *May 6th, 1895.*

Hon. HENRY L. DAWES,
Muscogee, Ind. Ter.

DEAR SIR: I have the honor to acknowledge your favor of the 25th ultimo, in which you mention the request of the President to meet your Commission at an as early day as convenient. In reply thereto, I shall name the day on which I shall meet you, which is Saturday, the 11th instant; the place of meeting, Muscogee.

I have the honor to be, very respectfully, yours,

(Signed) C. J. HARRIS, *Principal Chief.*

TULSA, IND. TER., *May 11th, 1895.*

Hon. HENRY L. DAWES,
The Chairman Ind. Commission of the U. S.

SIR: Yours has been rec'd, but has not been able to say definitely the time you can meet the Creeks. I will say now that a call session of the national council will meet at Okmulgee on the 14th of this month, and will continue in session for at least the following week, and should you wish to see the Creeks at that time will be pleased to meet you or any of the Commission.

Yours, truly,

(Signed) L. C. PERRYMAN, *Prin. Chief, M. N.*

On arrival at Muscogee, where they held for the time being their headquarters, they addressed to the chief of each of the Five Civilized Tribes the following letter,

inclosing a letter from the President to the Honorable Secretary of the Interior, and from the Secretary to the chairman of the Commission:

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muscogee, Ind. T., May 13, 1895.

To the PRINCIPAL CHIEF OF THE ——— NATION:

DEAR SIR: The Commission to the Five Civilized Tribes have been directed to present again to the several nations for further consideration the matters upon which they are authorized to confer, and are in receipt of a letter from the honorable Secretary of the Interior, in which he encloses one from the President of the United States disclosing his great interest in the success of this Commission in coming to some agreement with your people, which shall secure all your just rights and promote your highest welfare, as well as contribute to the best interests of the whole country.

By direction of the Commission I enclose to you copies of these letters, with the hope that you will make them known to your people, and commend their spirit and purpose to the favorable consideration and cooperation of your nation.

I am, with the highest consideration, truly yours,

(Signed) HENRY L. DAWES, *Chairman.*

DEPARTMENT OF THE INTERIOR,
Washington, May 6, 1895.

Hon. HENRY L. DAWES,
Chairman Five Civilized Tribes Commission, Muscogee, Ind. Ter.

MY DEAR SIR: Enclosed I hand you a copy of a letter from the President, in which he discusses the work of the Commission of which you are the chairman. I hope it may aid you to convince the Indians that this work has really their own advantage in view. The impossibility of permanently continuing the present form of government of the Five Civilized Tribes must be apparent to those who consider the great difficulty already experienced, even by an administration favorable to the enforcement of treaties, in preserving for them the rights guaranteed by the Government. As the time must come when they will change their present system, how much better for them to inaugurate with you now, under an Administration favorable to their rights, the plan by which this change will be accomplished?

Very truly, yours,

(Signed) HOKE SMITH, *Secretary.*

EXECUTIVE MANSION, *Washington, May 4, 1895.*

Hon. HOKE SMITH,
Secretary of the Interior.

My DEAR SIR: As the Commissioners to negotiate and treat with the Five Civilized Tribes of Indians are about to resume their labors, my interest in the subject they have in charge induces me to write you a few words concerning their work.

As I said to the Commissioners when they were first appointed, I am especially desirous that there shall be no reason, in all time to come, to charge the Commission with any unfair dealing with the Indians, and that, whatever the result of their efforts may be, the Indians will not be led into any action which they do not thoroughly understand or which is not clearly for their benefit.

At the same time I still believe, as I always have believed, that the best interests of the Indians will be found in American citizenship, with all the rights and privileges which belong to that condition. The approach to this relation should be carefully made, and at every step the good and welfare of the Indian should constantly be kept in view, so that when the end is reached, citizenship may be to them a real advantage instead of an empty name.

I hope the Commission will inspire such confidence in those with whom they are to deal that they will be listened to, and that the Indians will see the wisdom and advantage in moving in the direction I have indicated.

If they are unwilling to go immediately so far as we think desirable, whatever steps are taken should be such as point out the way, and the result of which will encourage those people in further progress.

A slow movement of that kind, fully understood and approved by the Indians, is infinitely better than swifter results gained by broken pledges and false promises.

Yours, very truly,

(Signed) GROVER CLEVELAND.

Not receiving any replies to these letters the Commission addressed to each of the chiefs of these nations a letter bearing date May 18th, 1895, of which the following is a copy:

MUSCOGEE, INDIAN TERRITORY, *May 18, 1895.*

To the PRINCIPAL CHIEF OF THE ——— NATION.

SIR: As representing the Commission to the Five Tribes, I took the liberty a few days since to direct to you a copy of a letter from the President of the United States and the Honorable Secretary of the Interior upon the subject of the mission of the Commission to this Territory.

The Commission has also been directed by the President to communicate to you and the chiefs of the other four nations the fact that they have returned to the Territory for the purpose of renewing their negotiations with the authorities of the several nations in reference to the subject-matter committed to them.

They desire to open negotiations with you in accordance with the spirit of the letter of the President heretofore sent to you, and therefore they would be gratified to know at what time and where it will be most agreeable to you to meet and confer with them upon that subject, either yourself, personally, or others appointed by you for that purpose.

It is not necessary to enlarge at this time upon the purposes and object which the Commission has in charge. Those have all been heretofore presented to you. It is sufficient at this time to assure you that the Commission have not come here to interfere at all with the administration of public affairs in these nations, or to undertake to deprive any of your people of their just rights. On the other hand, it is their purpose and desire, and the only authority they have, to confer with you upon lines that will result in promoting the highest good of your people and securing to each and all of them their just rights under the treaty obligations which exist between the United States and your nation.

If you and your authorities are willing to confer with the Commission upon these questions and along these lines please indicate to us here in Muscogee, at an early date, when and where and in what manner it would be most agreeable to you to hold such conference.

I have the honor, with much consideration, to be,

Very truly, yours,

(Signed) HENRY L. DAWES, *Chairman.*

In answer to this the chief of the Choctaw Nation wrote as follows:

EAGLE TOWN, IND. TER., *May 27, 1895.*

Hon. HENRY L. DAWES,
Chairman of Commission to the Five Tribes, Muscogee, I. T.

DEAR SIR: Yours of 18th inst. rec'd, and in replying I have only this authority to say: As we hold our land in common and in accordance with our treaties and constitution, it is necessary and just to all of the Choctaws to get their consent before we could open negotiations with this Commission.

At the convening of the board of education at Tushka Homma, the 8th day of July, 1895, I, with a great many others, will be there; should it meet with the convenience of the Commission to meet us there at that time they would get their views on the subject of the Commission.

Hoping this will suffice for the time,

I am, very truly, yours,

(Signed) JEFF. GARDNER, *P. C. C. N.*

This letter was answered by the Commission as follows:

MUSCOGEE, INDIAN TERRITORY, *June 5, 1895.*

Hon. JEFF. GARDNER,
Principal Chief, Choctaw Nation, Eagletown, Indian Territory.

DEAR SIR: I am in receipt of yours of the 27th ult., and am directed by the Commission to express to you their thanks for a courteous and early reply to their communication of the 18th ult.

They are led, however, to think from your letter that perhaps they have failed to make clear to you the purposes of their request. The Commission understands that neither you as chief nor any other of your citizens, except expressly authorized by your national council, would have any authority which would be binding to negotiate with this Commission upon any of the subjects with which they are charged. The law which created this Commission expressly provided that before any agreement or any proposed agreement can have any binding force, it shall be first approved

by your council, and if so approved it shall be afterwards approved by Congress or go for nothing. So that if you and the Commission should agree upon anything it would not have the slightest binding force until after the approval of both bodies. For this reason the Commission does not ask you to make any agreement with them. What they do desire and what is the purpose of their correspondence is a conference with you, or with some persons selected by you for that purpose, that you may the better understand what the Government of the United States desires of your people, and what modification of the present condition of public affairs among your people would, in your opinion, be for the best interests of your people, and which you might be willing to present to your council at its next meeting for their consideration. Without such preliminary conference it is difficult to see how anything tangible can be brought before them for their consideration. Such a conference can do no harm, if nothing results from it, and the Commission are confident that much good will come of it, and that from it some measure may be arrived at which you can submit to your council for them to consider. Such a measure could be altered and modified to meet objections while under consideration by your council, if they desired, and up to the last moment of approval, and if in the end it should fail, things would remain as before.

The Commission takes this opportunity to assure you that they recognize fully your treaty rights, and are instructed to respect them. The United States wants nothing which belongs to your people, either their lands or any other rights they enjoy under their treaties, but they are impressed with the conviction that some change in the present condition of affairs is necessary for the good of your people, and their desire is that you shall make that change yourself, and this Commission is sent here to aid you in effecting such a change.

The fact that the treaty rights of each nation are distinct and different from those of the others make a separate conference with each necessary, and one in which all the nations are represented impracticable.

The Commission submits these considerations to you in the hope that they will satisfy you that its presence here is from no other motive or object than to promote the welfare of your people under the treaty rights secured to them, and that you will think it wise to appoint at an early day such a conference as is here suggested.

An early reply, that we may report to the President your conclusions, is urgently requested.

I am, with high consideration, yours, truly,

(Signed) HENRY L. DAWES, *Chairman.*

There being no other replies to their letter of May 18th the Commission again, on June 5th, addressed still another letter to the chiefs of the different nations, of which the following is a copy:

MUSCOGEE, INDIAN TERRITORY, *June 5th, 1895.*

To the PRINCIPAL CHIEF OF THE ——— NATION.

SIR: The Commission to the Five Civilized Tribes, appointed by the President of the United States in conformity with the act of Congress approved March 3rd, 1893, and amended March 2nd, 1895, has heretofore addressed to you certain communications, dated, respectively, May 13th and May 18th, 1895, copies of which are herewith enclosed, and has received no response to the request for conference therein contained.

The Commission was sent here to confer with each of the tribal governments, and would, therefore, be pleased to know if such conference with duly authorized representatives of your government will or will not be accorded.

If at such conference an agreement is reached, you are aware that it will not be binding until approved both by your council and the Congress of the United States.

It is desired that the objects of our mission should be fully understood by your representatives, that the same may be presented to your national council for consideration.

We have the honor to be, with sentiments of high consideration,

Respectfully,

(Signed) HENRY L. DAWES.
FRANK C. ARMSTRONG.
A. S. MCKENNON.
T. B. CABANISS.
ALEXANDER B. MONTGOMERY.

To this letter the chief of the Cherokee Nation on the 11th of June replied, giving what he considers sufficient reason for not complying with the request of the *Commission* to enter again into negotiations.

The following is a copy of his letter:

TAHLEQUAH, I. T., *June 11th, 1895.*

Hon. HENRY L. DAWES and others of the Commission to visit the Five Civilized Tribes of the Ind. Ter.

GENTLEMEN: Yours of the 5th instant relative to a conference between your Commission and authorized representatives of this nation is at hand. However anxious I may be to accommodate you in this matter, it is not within my power to say when this opportunity can be offered you. The council at its late session made no provision for such a contingency. I am therefore without authority to appoint the kind of representatives you mention in your letter, because any appointment of representatives could not be considered properly authorized unless I was myself authorized by law to make such an appointment.

How it is with the other nations of the Territory I know not, but there is to be a general council of the nations at Eufaula on the 28th instant. The prime object of this council being the propositions of your commission, it is reasonable to suppose that some disposition will be made of them by the representatives of the several nations in convention.

All I can do just now to further your project is to give you what aid I can in any manner or means you may wish to adopt to reach the people of this nation on the purpose of your mission. This I will endeavor to do at your wishes or suggestions.

Your letter of the 13th of last month, inclosing the President's letter to the Hon. Secretary of the Interior, has been received and the President's letter published as you desired, but your communication of the 18th ult. and the inclosures of the one now before me have not been received.

With the tone of the President's letter I am well pleased, as he seems to appreciate the gravity of your propositions and the immense and the untried effects they involve. No people except the nations of this Territory, either fortunately or unfortunately, are to feel the consequences of this experiment. The President is humane enough not to desire to force conditions on us with the prospect of doubtful consequences that present themselves in the consideration of your propositions.

The national council will not meet in regular session before the first Monday in November of this year, but that you may know something of its sentiments on the subject of your mission I inclose you a copy of their reply submitted last winter.

Very respectfully,

(Signed) C. J. HARRIS, *Principal Chief.*

The chief of the Creek Nation on the 10th of June replied as follows:

TULSA, IND. TER., *June 10, 1895.*

The Hon. U. S. COMMISSION:

Your letter has just been read. In answer to same, I will state that I submitted all your other letters to the extra session of council for their action. At present I am unable to ascertain what action was taken by the council touching your propositions. You will be informed at a later date the action taken by the council.

Yours, truly,

(Signed) L. C. PERRYMAN, *Chief M. N.*

These are the only replies made in writing by the officials of any of these nations either to our written requests or personal application to them to consider the question of further negotiating with the Commission upon the subject-matter of the present condition of affairs in the Territory. The chief of the Cherokee Nation had a personal interview with the Commission soon after the receipt of the last letter, in which he stated that an international council—that is, a conference of delegates from the several five tribes—was about to meet to take into consideration the question of a renewal of negotiations with the Commission. It came to the knowledge of the Commission that immediately upon the receipt by Chief Harris of letters from the Commission informing him that the work of the Commission was to be renewed in the Territory, he instituted proceedings at once for the calling together of representatives of the Five Nations in council, to concert measures more effectually by united action of all the nations, to resist any attempt from any quarter to effect a change of the present condition of affairs, and that this council was the result of this action on the part of the chief of the Cherokee Nation. The council was not attended by delegates from the Choctaw Nation, and in consequence action upon the question was *postponed to a future* time. The sentiment of the council,

however, so far as it was expressed, was of a most positive character adverse to further treating on any conditions with the United States Government upon the subject of change in any respect in the condition of affairs in the Territory.

At the adjourned meeting of this international council it reaffirmed the resolutions adopted at the international council of last year, declining to enter into negotiations, and ordered that several thousand copies of these resolutions be printed and circulated throughout the Territory. A copy is attached to this report and is made a part thereof.

At this meeting the Choctaw Nation was again not officially represented, but three volunteer delegates from that nation were permitted to occupy seats and represent the nation in this council.

The Commission have sought personal interviews with the officials of each of the tribes in the endeavor to ascertain what modifications of the propositions heretofore made would induce them to consider the question of negotiating with the Commission.

During the months of July and August the citizens of two or three of the leading tribes in the Territory were engaged in exciting election campaigns, and apprehensive that it might be thought we were interfering with their political affairs, the Commission, in a measure, refrained from intermingling with the people, and nothing of significance occurred during that time save the holding of meetings at Hartshorne and Atoka, in the Choctaw Nation, by citizens favoring allotment, both of which were addressed by one of our number.

On the 28th of September the following communication was received from Hon. P. S. Mosely, governor of the Chickasaw Nation:

TISHOMINGO, IND. TER., *September 27, 1895.*

Hon. HENRY L. DAWES,
Chairman of the U. S. Commission.

HON. SIR: You will find herein inclosed a copy of a resolution which has, as you will see, been passed by our legislature. Same will explain itself. Please notify me when you can meet us.

Very respectfully,

(Signed) P. S. MOSELY, *Governor C. N.*

The resolutions are as follows:

Whereas the United States Government has appointed a Commission known as the Dawes Commission to visit the Five Civilized Tribes of Indians for the purpose of inducing said tribes to change the tenure of their lands.

And whereas the courtesy due from one government to another demands that their representatives be treated with all due respect and consideration:

Now, therefore, be it resolved, that we, the Chickasaw legislature in council assembled, recognizing the above facts, hereby authorize the governor of the Chickasaw Nation to notify said Dawes Commission that we are now ready to give whatever proposition they may make due consideration.

Recommended by Holmes Colbert. Amended by the house by striking out the clause "Tribes of Indians" and inserting in lieu thereof "legislature."

Approved Sept. 24, 1895.

P. S. MOSELY, *Gov. C. N.*

Passed the Senate Sept. 23rd, 1895.

N. G. FRAZIER, *Prest. Senate.*
WM. M. GUY, *Secty. Senate.*

Passed the House with the amendment within Sept. 24th, 1895.

LEWIS KEEL, *Speaker of the House.*

Attest:
ARCH MCGEE, *Clerk.*

Passed the Senate as amended Sept. 24th, 1895.

N. G. FRAZIER, *Prest. Senate.*

Attest:
WM. M. GUY, *Sectry. Senate.*

To this letter of the governor of the Chickasaw Nation the following reply was made:

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
South McAlester, Ind. Ter., Sept. 28th, 1895.

Hon. P. S. MOSELY,
Governor Chickasaw Nation, Tishomingo, Ind. Ter.

DEAR SIR: We beg leave to acknowledge the receipt of your letter of the 27th inst., enclosing resolution of your legislature, passed and approved September 24th, 1895, authorizing you to notify this Commission that they were ready to give whatever proposition we might make due consideration; and in accordance with which you ask us to name a day when we can meet with you and them.

This action of your legislature has been duly considered, and whilst we believe that the most feasible if not the only practicable way to accomplish results is to negotiate with a commission appointed by your legislature, clothed with authority to act, subject to approval by your people, as set forth in our letters of the 8th of May and the 5th of June last, addressed to you, yet with pleasure we accede to your request and name Saturday, October 5th, 1895, as a time when we can meet you and your legislature for the purpose specified.

We have the honor to be, yours, very respectfully,

(Signed) FRANK C. ARMSTRONG.
A. S. MCKENNON.
T. B. CABANISS.
A. B. MONTGOMERY.

Governor Mosely responded, fixing Tuesday, October 8th, as the day for the meeting. According to this arrangement, four members of the Commission visited the capital of the Chickasaw Nation and addressed its legislature, setting forth fully the purposes of the Commission and asking and urging the appointment of a commission of such number and in such manner as they might deem best, clothed with authority to act in conjunction with a similar commission to be appointed by the Choctaw council, then in session, to which commissions in joint session this Commission might make propositions and with whom we might negotiate an agreement.

On November 6th the Commission received from Governor Mosely the following letter:

TISHOMINGO, IND. TER., *Nov. 1st, 1895.*

Hon. HENRY L. DAWES,
Chairman Dawes Com., Ft. Smith, Ark.

DEAR SIR: Our legislature has now elected five commissioners to confer with the like commissioners from the Choctaws and also with your Commission. I suppose when the commission gets organized you will receive further notification.

Very respectfully,

(Signed) P. S. MOSELY, *Gov. C. N.*

Since the receipt of this letter no further advices, either from Governor Mosely or from any commission of the Chickasaw Nation, have been received.

On the 28th of October the following invitation was received:

To the Hon. MEMBERS OF THE DAWES COMMISSION.

GENTLEMEN: You are hereby invited to come to the Choctaw capitol on the 29th day of October, 1895, at 10 o'clock a. m., to meet the committee organized to confer with your honorable body.

Yours, respectfully,

OLOSACHUBBEE, *Chairman.*

TUSHKAHOMMA, IND. TER., *Oct. 28th, 1895.*

Accepting the same, three of our number visited the Choctaw capitol at the time appointed, met and conferred with said commission, submitting to them orally the propositions afterwards reduced to writing and transmitted to them, which are as follows:

FORT SMITH, ARKANSAS, *October 30, 1895.*

To the Honorable Olosachubbee, Chairman, and Members of Committee appointed by the National Council, Choctaw Nation, Tushkahomma, Indian Territory:

The undersigned commissioners, appointed for that purpose by the United States, propose to *negotiate with the Choctaw Nation* for the purpose of exchanging, by said

nation, upon terms that shall be just, fair, and reasonable to all concerned or interested therein, the present tribal title of said nation to its lands and other property for an equal division thereof among all citizens of the tribe entitled to share therein, and an adjustment and full settlement of all demands, claims, and other unsettled matters of any kind existing between the United States and said nation, so far as may be necessary and proper for the ultimate creation of a Territorial or State government under authority of the United States, embracing said Choctaw Nation and such other nations of the Indian Territory as may desire to become a part thereof.

The United States to put each person in possession of the lands to which he is so entitled, without expense to him and the tribal government, to remain in authority until the completion of the changes herein proposed, and as much longer as shall be agreed upon in such negotiations.

(Signed) HENRY L. DAWES.
FRANK C. ARMSTRONG.
ARCHIBALD S. MCKENNON.
THOS. B. CABANISS.
A. B. MONTGOMERY.

No reply to this communication has been received, but immediately upon its receipt by the national officials the following bill was introduced and passed by the Choctaw senate with only one dissenting vote. The bill failed of passage in the house:

Be it enacted by the general council of the Choctaw Nation, assembled, That it shall be unlawful for any citizen of the Choctaw Nation to attempt to overthrow the Choctaw government by exciting or subverting the minds of the people against the Choctaw form of government, and shall not hold or attempt to hold Choctaw land in severalty, nor shall attempt to convey any part or parcel of the Choctaw land to a noncitizen or citizens, or attempt to betray said land and Choctaw country into the hands of a foreign power.

Be it further enacted, That any person or persons violating the first section shall be prosecuted against in the circuit court having jurisdiction, and if proven guilty of treason by two or more witnesses, shall be punished by confinement in jail not less than six months nor more than twelve months, and fined not less than $1,000 nor more than $10,000, at the discretion of the court.

Be it further enacted, That if any person or persons violate this act the second time he or she shall be arrested, sentenced, and executed until dead.

Be it further enacted, That any act or part of act coming in conflict with this act is hereby repealed, and that this act shall take effect and be in force from and after its passage.

On the 4th day of October, 1895, the Commission addressed the following communication to the principal chief of the Muskogee Nation:

DEPARTMENT OF THE INTERIOR,
South McAlester, Ind. Ter., October 4th, 1895.

To the PRINCIPAL CHIEF OF THE MUSKOGEE NATION,
Okmulgee, Ind. Ter.

SIR: On June 5th, 1895, we addressed a letter to Hon. L. C. Perryman, principal chief of the Muskogee Nation, calling attention to certain communications, dated respectively May 13th and 18th, 1895, asking for a conference with himself or duly authorized representatives of his nation, to which no reply had been received, and repeating the object of our mission, and again asking for a conference.

To this last communication a reply, dated June 10th, 1895, was had, stating that our former letters had been submitted to the extra session of the Muskogee council, which convened on the —— day of ——, 1895, and that later information would be given of its action.

We have waited patiently for that promised information, but none has been received; and as we are required to make report by the first of November next to the Secretary of the Interior, and through him to the Congress of the United States, of the result of our mission, we again respectfully request that your council will appoint commissioners clothed with authority to act. If upon conference an agreement is reached, it will not be binding until approved both by your council and the Congress of the United States.

An early reply to this is desired, as our further stay in the Territory is limited.

Very respectfully,

(Signed) FRANK C. ARMSTRONG.
A. S. MCKENNON.
T. B. CABANISS.
A. B. MONTGOMERY.

To this letter no reply has been received by the Commission. Propositions similar to those forwarded to the Choctaw Nation were at the same time forwarded to the chief of the Cherokees, with the request that he would lay the same before the council about to assemble, to which he replied as follows:

TAHLEQUAH, IND. TER., *November 1st, 1895.*

Hon. HENRY L. DAWES,
Chairman Committee, Fort Smith, Ark.

DEAR SIR: I have the honor to acknowledge your favor of the 30th ultimo, renewing the propositions of your Government to this nation. My term of office will expire in a few weeks more, and upon my successor will devolve the duties of principal chief. Among the many will be the submission of your propositions to the national council as requested by you, and to which I will call his particular attention.

I am, very respectfully,

(Signed) C. J. HARRIS, *Principal Chief.*

The Commission has had no notice of any further action in the matter.

In connection with the official intercourse here briefly outlined the Commission availed themselves of every opportunity of conference with private citizens of the several nations, men of character and influence among their people. By visits to the various localities they familiarized themselves with the conditions of life and the opinions and prejudices which prevail in the different sections, and adapted the methods of their attempt at negotiation to these conditions. But thus far they have met with no favorable response among those holding power and controlling the political machinery in the governments now existing in the Territory. It is otherwise with those, believed to be a large majority, who, in the machinery by which affairs are administered, are without voice or participation in the policy or laws by which they are governed. The causes, which thus far have proved insurmountable in all the efforts at a peaceable solution of the problem by negotiation, can only be understood by a thorough knowledge of the conditions into which these people have been permitted to fall by the indifference and noninterference of the National Government.

The Commission has heretofore reported how completely the tribal governments have fallen under the control of the mixed bloods and adopted citizens, and have been used by them to secure to the exclusive use and private gain of a few of their own number much of the tribal property in the land, and from other sources everything valuable and capable of producing profit. More than a third of the whole territory of one of the nations is exclusively appropriated and fenced in by barbed wire to the sole use of a few citizens for pasturage. In other of these nations, under similar legislation, vast and rich deposits of coal of incalculable value have been appropriated by a few to the exclusion of the rest of the tribe, and to the great profit of those who operate them and appropriate their products to their individual use. Similar legislation has enabled private individuals to appropriate the timber of vast pine forests and denude the public domain of this essential element of future development and growth. In short, almost everything of tribal property in which every citizen Indian has of right an equal share has, if of any value, been appropriated to the use and gain of the few, while the real full blood has been left destitute and crowded out upon the mountains and unproductive land, to take care of himself as best he can.

This condition of affairs has not improved since the last report of the Commission. On the contrary, the indications are very manifest that the discussion of the question of a possible change has had the effect of stimulating an unusual activity in efforts to realize as early as possible all available gains arising from this exclusive appropriation of the use of common property. The grasp of those holding power upon the tribal resources has become firmer, and the uses to which the powers of the government have been put for the benefit of the few have become more palpable and flagrant. Those thus prostituting the forms of their laws to private gain have become so open and bold in their operations as in many cases to freely avow that the terms upon which they may be corrupted are made more easy in view of the possibility that the opportunity for such gain may be short.

TOWN SITES.

The attention of the Commission was early called to the anomalous conditions under which a large number of towns of considerable size and growing importance have sprung up in different parts of the Territory destined to exert an important influence upon its future. These towns are the natural and necessary outcome of the great change which is forcing all the active agencies of these nations into new channels. The railroad has been fatal to the old order of things, and has forced upon these people much that is found new among them, and so firmly fastened upon them that removal is impossible and resistance to further advances equally futile. The trunk lines of great railroad systems now traverse the Territory its entire length, north and south and east and west, and lateral feeders connect almost every portion of it with railroad facilities hardly less convenient than those existing in the neighboring States.

But the first railroad that crossed its border brought with it these towns just as much as it brought commerce and commercial relations, the avowed object for which it sought entrance. The two are inseparable. Traffic and business centers live each by and upon the other, and they multiply and prosper side by side. These towns are at this moment growing rapidly in number, size, and importance as marts of trade and places of attractive residence in all parts of the Territory. They have come to stay, and their removal is as impossible as the restoration of the tepee and the war dance in the valley of the Mohawk in the place of the cities and towns now flourishing there. Nor does the Indian citizen desire their removal. The Commission have failed to find an intelligent citizen Indian who desires the removal of the white residents of the Territory, except that small portion in the Cherokee Nation called intruders, who claim to be Indians, but whose claim is disputed by the nation.

But the existence of these towns in the Territory has come to be as much of a necessity to the citizen Indian as to the white resident, as has the business traffic which railroad enterprise has stimulated wherever it has been permitted to lay its track.

No greater change in any of the conditions existing in these nations is manifest than in the life of the citizen Indian himself. He no longer depends upon his own labor for his livelihood. The white man, invited to the Territory under laws enacted for that purpose, or the negro, once the slave of the Indian and his children, now labor for him, and he has become a landlord, a trader, or an owner of herds kept for him by others. This is the rule, well-nigh universal, with only here and there an exception to make the rule more marked and significant. Places for trade and markets for their products as well as supplies are therefore an absolute necessity to this new mode of life. Take them away and the Indian landlord, trader, or keeper of herds would be at once deprived of all opportunity for profit or even means of support.

These towns have been built and peopled by white residents, whose capital has been invested in large amounts in structures necessary for the great and increasing trade which is being carried on at these centers. Costly and attractive residences have been erected in many of them, and in character they compare favorably with like towns in any of the new States. They vary in population at the present time from 800 to 5,000 inhabitants, and, with few exceptions, are doing a surprisingly large and prosperous business. And yet those who have built these towns, invested their capital in these expensive structures and have made these beautiful homes, have no title to the land on which they rest. This remains in the nation, where it was placed by the original treaty seventy years ago, subject to a reversion to the United States when the tribe ceases to exist. The devices resorted to in the different nations to give the builders of these towns a semblance of a claim to the land upon which they have erected them are valuable only as showing the subterfuges which the radical departure from the original plan and basis on which these govern-

ments were established has forced them to adopt. These devices have no validity in law. The title still remains in the nation, subject to the above reversion, and must from its very nature be held by the nation for the use of all its citizens, share and share alike, and can not be appropriated to the exclusive use of any one citizen or resident.

Generally these towns rest on the following unsubstantial arrangement with the national authorities. A citizen Indian is first authorized by the laws of the nation to inclose for his own exclusive use any unoccupied territory. He, having first inclosed a prospective town site, leases town lots at a ground rental, or quitclaims his title for a gross sum to the incoming builder, sometimes covenanting that if he ever gets a better title it shall inure to his grantee. Millions of dollars have been expended in the laying out of streets and building of necessary structures in these towns by those who have no other title than this, hardly more as against the holder of the fee than a tenantcy at sufferance. The Cherokees have in two or three instances gone a little further than this, have conveyed what title they could in town lots to citizen Indians, but without power to sell to any white resident, and vested in such Indians the control of any town government that might be created.

With these exceptions these towns in the Territory are without town government or town officers, town police, or police courts of any kind, and are unable to adopt or enforce any municipal ordinance or regulation. They can not impose a tax for any municipal purpose, such as laying out and improvement of streets and sidewalks, bringing in gas or water, the construction of sewers and the maintenance of a fire department. They can not even appoint a constable to keep the peace. They are merely a voluntary association of white residents with not only no power to govern their own organizations, but without a vote or voice in the election of the rulers, or the making of the laws under which they live.

The Commission have been agreeably surprised at the good order and quiet prevailing in the towns here spoken of, where there exists no authority for its enforcement, or for punishment of its infraction. But they have not been able to lose sight of the conditions, unsafe at all times and sometimes dangerous, which have no other reliance than the good disposition of the body of the people composing the population of cities and towns like these. It is an exposure of life and property to dangers which can not be justified and should not be continued an hour beyond necessity.

Besides, a town that is not owned by those who build it and make it their home can not prosper, and it needs no argument to show that ownership is essential to development, and that there can be no healthy and permanent growth so long as there remains an uncertainty hanging over the title to whatever may be added. The residents whose capital and business connections have made these towns what they are have become very uneasy and much disturbed over these defects of title and impediments in the way of future growth. The Commission have been pressed on every side by those interested in the permanent prosperity of these towns and the safety and well-being of the people residing in them to devise some remedy. They thought that a solution of this town-site question would be one step and a long one toward the solution of the greater question of conforming the holdings and governments of the Territory to the system of government under which all communities within our borders must live. And accordingly they prepared a bill designed to secure to those who build these towns the ownership of the lots, within a suitable area, upon paying to the nation their value, and also the authority to maintain a suitable town or city government in the same. This bill, if ratified by the legislative authority of the nation and by Congress, would have secured these most desirable ends. But the provision in it which enabled the citizens of the United States who were not citizen Indians to obtain title to the lots on which they had built the town proved fatal to its approval by the nation. There was no objection to any other provision of the bill, but it was insisted that under no conditions would a United States citizen be permitted to gain title to any portion of the national soil,

no matter what amount of capital or other improvement he had been invited or permitted to invest or expend upon the same for the mutual benefit of himself and the community among whom he resides. The Commission has not been able, therefore, to secure from these nations any agreement which, if ratified by Congress, would put these growing and mutiplying towns on any safe and permanent position, or secure to their residents the authority to so govern them as to maintain good order and secure health and prosperity to all whose business or homes are within their borders. So long as the present autonomy remains this unsafe and precarious condition of affairs must hang over these communities.

UNITED STATES CITIZENS.

No one carefully studying the condition of affairs in the Indian Territory and the many difficulties by which it is surrounded will fail to take into serious consideration the question of the disposition of that large and preponderating body of residents who are not citizen Indians and who have no foothold in the soil or voice in the governments. There are of these nearly, if not quite, 300,000, not including those called "intruders," whose claim to be Indian citizens is denied, and whom the United States has recently agreed to remove.

The status of these 300,000 United States citizens residing in this Territory has been already partially discussed in connection with the town-site question, but its serious character requires further notice.

These residents are in no sense intruders, and are not so classed by anyone. They are in the Territory by invitation, by consent, and by encouragement. Their capital and labor have been availed of for the development of the productive resources of the Territory, and they have built homes for themselves, erected costly edifices and marts of trade and centers of business to meet the demands of the new life forced upon the people. Some thousands of their children who were born in the Territory are now of school age. The doors of the schools of the nations are shut against them, and what education they get is by private contribution. The tribal governments and courts make no provision for the protection of the life or property of these white residents, constituting in number four-fifths of the entire population. Whatever protection of law they have, the United States has sparingly afforded them in United States courts, which necessity has forced into the Territory in the face of the claim of the Indian governments that even this much of interference is forbidden by treaty. So long as these residents are content to remain without interest in the soil or voice in the government or share in its opportunities, those holding control of public affairs do not molest or disturb them, but eagerly avail themselves of all the incidental advantages their presence affords. Their capital and enterprise and labor are most willingly turned to the development and increase of the wealth of these nations, in which sedulous care is taken that these United States citizens shall have no lot, and for whose safety of person and property no provision is made. The Commission is impressed with the conviction that this condition of affairs can not long continue.

It can not be possible that in any portion of this country government, no matter what its origin, can remain peaceably for any length of time in the hands of one-fifth of the people subject to its laws. Sooner or later violence, if nothing else, will put an end to a state of affairs so abhorrent to the spirit of our institutions. But these governments are of our own creation, and rest for their very being on authority granted by the United States, who are therefore responsible for their character. It is bound by constitutional obligations to see to it that government everywhere within its jurisdiction rests on the consent of the governed. There is already painful evidence that in some parts of the Territory this attempt of a fraction to dictate terms to the whole has already reached its limit, and, if left without interference, will break up in revolution. The Chickasaw Nation, in its zeal to confine within the narrowest limits and to the smallest number all privileges and rights, as well as

participation in the government, and to weed out as many as possible of the uneasy, has enacted the following confiscation law:

AN ACT to amend an act in relation to United States citizens procuring license to marry citizens of this nation.

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That an act in relation to United States citizens procuring license to marry citizens of the Chickasaw Nation be amended thus:

SEC. 2. *Be it enacted*, That all United States citizens who have heretofore become citizens of the Chickasaw Nation or who may hereafter become such by intermarriage and be left a widow or widower by the decease of the Chickasaw wife or husband, such surviving widow or widower shall continue to enjoy the rights of citizenship, unless he or she shall marry another United States citizen, man or woman, as the case may be, having no right of Chickasaw citizenship by blood; in that case all his or her rights as citizens shall cease and shall forfeit all rights of citizenship in this nation.

SEC. 3. *Be it further enacted*, That whenever any citizen of this nation, whether by birth or adoption or intermarriage, shall become a citizen of any other nation or of the United States or any other Government, all his or her rights of citizenship of this nation shall cease, and he or she shall forfeit all the land or money belonging to the Chickasaw people.

SEC. 4. *Be it further enacted*, That the rights and privileges herein conferred upon United States citizens by intermarriage with the Chickasaws shall not extend to the right of soil or interest in the vested funds belonging to the Chickasaws, neither the right to vote nor hold any office in this nation. All parts of acts coming in conflict with this act are hereby repealed, and that this act take effect from and after its passage.

Approved, October 1, 1890.

I hereby certify that the above is a true and correct copy of the original act now on file in my office.

Given under my hand and seal this the 18th day of October, 1895.

L. S. BURRIS,
National Secretary, Chickasaw Nation.

It will be observed that among the other penalties here imposed the third section forbids on pain of confiscation any Indian citizen to apply under existing United States laws for United States citizenship, and thus gain a right to enter United States courts for vindication of his rights or avail himself of any anticipated authority conferred on that court to partition the common lands of the nation.

The anticipated enforcement of this act has caused great consternation and excitement among a considerable number of residents in the Chickasaw Nation who were, up to its enactment, admitted citizens enjoying all the rights accorded to any citizen, and possessed, some of them, of very large property interests in the nation. Preparation is being made by the authorities of the nation for its enforcement, and notice to quit is being served upon those to whom it applies. In the meantime threats of open resistance are rife. The resolutions of a secret organization among those whose property is by this act confiscated have been laid before the Commission, in which the determination is avowed "in the event that Indian officials undertake to carry out this law to exterminate every member of this council from the chief down." The commission is appealed to for relief, but without power to interpose they can only bring this critical condition of affairs to the attention of the United States Government as one among the many reasons for immediate Congressional action.

CHEROKEE CITIZENSHIP.

Citizenship in these nations has been left by the National Government entirely under the control of the authorities in the several existing governments.

The citizenship roll of the Cherokees has dealt with a larger number than any of the others, affecting as it does all North Carolina Cherokees who desire to become a part of the nation, and a more liberal policy of adoption by intermarriage and otherwise than exists in the other tribes.

A tribunal was established many years ago for determining the right of admission to this roll, and it was made up at that time by judicial decision in each case. Since that time and since the administration of public affairs has fallen into present hands, this roll has become a political football, and names have been stricken from it and added to it and restored to it, without notice or rehearing or power of review, to answer political or personal ends and with entire disregard of rights affected thereby. Many who have long enjoyed all the acknowledged rights of citizenship have, without warning, found themselves thus decitizenized and deprived both of political and property rights pertaining to such citizenship. This practice of striking names from the rolls has been used in criminal cases to oust courts of jurisdiction depending on that fact, and the same names have been afterwards restored to the roll when that fact would oust another court of jurisdiction of the same offense. Glaring instances of the entire miscarriage of prosecutions from this cause have come to the knowledge of the Commission and cases of the greatest hardship affecting private rights are of frequent occurrence. This practice is persisted in, in defiance of an expressed opinion of the Attorney-General of the United States forwarded to this nation on a case presented that it was not in their power to thus decitizenize one who has been made a citizen by this tribunal clothed by law with the authority. There is no remedy but an interference of the United States.

The "intruders' roll" is being manipulated in the same way. This "intruders' roll" is the list of persons whose claim to citizenship is denied by the nation, and who by the agreement in the purchase of the "Cherokee Strip" the United States are to remove from the Territory by the 1st of January next. This roll is now being prepared for that purpose by the Cherokee authorities, in a manner most surprising and shocking to every sense of justice, and in disregard of the plainest principles of law. The chief assumes to have authority to "designate" the names to be put upon the intruders' roll, and names are, by his order, without hearing or notice, transferred from the citizens' roll to that of intruders, so that, on January 1, 1896, the United States will be called upon to remove from the Territory, by force if need be, thousands of residents substantially selected for that purpose by the chief of the nation. It has been made clear to the Commission that the grossest injustice and fraud characterize this roll. Persons whose names have been upon the citizens' roll by the judicial decree of the tribunal established by law for that purpose for many years, some of them for twenty or more, persons who have enjoyed all the rights of citizens, unquestioned by anyone until distribution per capita of the strip money, have been by the mere "designation" of the chief stricken from the citizens' roll and put upon that of intruders, with notice to quit before January next. Children of such parents, born in the nation, now of age, with families and homes of their own, are receiving this notice to leave forever all they have earned and the homes they have built for themselves, and this at the will of the chief alone. If the United States Government removes such persons it will become a participant in this fraud and injustice, for which ignorance alone can form any excuse. The Commission feel it a duty to call attention to these facts, and invoke the direct intervention of the Government to prevent the consummation of this great wrong.

These remarks apply specially to the Cherokee Nation, with which the United States has recently entered into obligations in respect to "intruders." But much of what is here said is applicable also to the condition of affairs in the other nations. In these nations many persons coming to the Territory by invitation of the governments themselves, or under the provisions of the laws enacted by them, and acquiring citizenship, with homes and property, in conformity to such laws, have been in many instances stricken from the rolls of citizenship by those in power, for political and personal purposes, and laws enacted and other means resorted to to deprive them of the homes and property acquired.

The Commission is of the opinion that if citizenship is left, without control or supervision, to the absolute determination of the tribal authorities, with power to

decitizenize at will, the greatest injustice will be perpetrated, and many good and law-abiding citizens reduced to beggary.

MISRULE IN THE TERRITORY.

A greater familiarity with the condition of affairs in the Territory than the Commission had at the time of making their last report does not enable it to abate anything of its representation of the deplorable state of affairs as therein stated. They are not only compelled to reaffirm all that they reported of the utter perversion of justice by those who have gotten possession of the machinery and funds of its administration in this Territory, inflicting in its name and that of the lawmaking power irreparable wrongs and outrages upon a helpless people for their own gain, but they are compelled to report that statistics and incontrovertible evidence shows a much more deplorable and intolerable state of affairs than was there represented. They refer to that report for a more extended detail of the character of the misrule which exists among these people, and make that more particular description than is here necessary a part of this report. If the end of government and the administration of justice is the protection of the life and liberty and property of the citizen, then the governments and courts of these nations are a failure, for they afford that protection to neither. They are powerless to these ends, and the victims of this misrule are helpless sufferers at the mercy of the malign influences which dominate every department and branch of the governments as administered here. It matters little, except as to the character of the remedy, whether this failure and misrule arises from impotence or willful and corrupt purpose, the evil consequences are incalculable and its continuance unjustifiable. It is no less true now than when the Commission reported last year that "all of the functions of the so-called governments of these five tribes have become utterly unable to protect the life or property rights of the citizen. Their courts of justice have become powerless and paralyzed. Violence, robbery, and murder have become almost of daily occurrence, and no effective measures of restraint or punishment are put forth by these governments and courts to suppress crime. Railroad trains continue to be stopped and their passengers robbed in the very presence of those in authority. A reign of terror exists, and barbarous outrages almost impossible of belief are enacted, and the perpetrators hardly find it necessary to shun daily intercourse with their victims."

The United States district court at Fort Smith, Ark., has been given jurisdiction in the Indian Territory only over crimes committed by an Indian upon a white man or by a white man upon an Indian. Of all crimes committed by Indians upon Indians the Indian courts still have sole jurisdiction. In this limited jurisdiction of the United States court the present able and upright judge has, since his appointment in 1875, sentenced to death on conviction in his court 153 persons, and there are to-day in the United States jail at Fort Smith under sentence of death appealed on questions of law 26. Of these 20 have been convicted the present year, the largest number in any one year. There are now under indictment for murder and awaiting trial 13 others, and several are in jail awaiting examination. There is also a United States court at Paris, Tex., having similar jurisdiction in the Indian Territory, the records of which show that since 1890 there have been 22 sentenced to death for murders committed in the Territory, and there are now under indictment 128, nearly all of whom are eluding arrest. How many murders in addition to these have been committed by Indians upon Indians, of which their courts have exclusive jurisdiction, there is no record available, but there is good reason to believe that they exceed these numbers. Reliable newspapers and individuals who have endeavored to obtain accurate information as to the prevalence of crime in the Territory agree in the statement that up to November 1 there had been 257 murders committed in the Territory since the last adjournment of Congress. Of course there have been many others not thus ascertained. If other crimes have in any degree a proportion

to that of murder in the Territory the condition must be appalling, and can not fail to call loudly for a remedy.

In addition to these statistics of prevalent crime taken from judicial records and other authentic sources, there is equally clear evidence of organized force in active operation intimidating and putting in peril witnesses who appear in court to testify for the Government in these cases. In cases of the most serious character now pending in these courts the witnesses have been, one by one, secretly assassinated. In others they have disappeared, and whether slain or not is not likely to be known until, by the failure of justice thus brought about, those charged with the most atrocious crimes have gone free. This terrorism makes it most difficult to obtain in the first instance witnesses to appear in court, knowing that by so doing they expose themselves to all possible persecution and personal danger, even to loss of life. In spite of the best efforts of the United States courts, there is for this reason a most lamentably frequent failure of bringing to justice those guilty of the most flagrant crimes in the Indian Territory.

The terrorism and intimidation is extended even to those who appear before this Commission with information as to the condition of affairs in the Territory and offer their views as to necessary changes. Not infrequently have highly respected citizens of these nations requested the Commission to withhold their names from any connection with the statements made by them as a necessary precaution to personal safety. And in the discussion among themselves of the questions involved they for the same reason take care that it shall be only in the presence of those whom they can trust not to betray them to others who are hostile to the objects of this Commission.

Recently the mayor of one of the towns which have sprung up in the Territory, a man of known integrity and irreproachable character, appeared before the Commission and presented his knowledge of the condition of affairs and his views of the necessity of a change. In a few days the Commission were in receipt of a letter from him informing them that he had been followed into Missouri, where he went on business, by two armed Indians, who informed him that he would be killed if he returned home through the Territory. He called upon the Commission for protection, which it had no power to give. This is not a singular instance, but the like of it is so frequent as to disclose a condition of affairs as deplorable as it is intolerable.

CONCLUSIONS.

The Commission was charged with the duty of negotiation only. They have been clothed with no authority beyond presenting to these "nations" such reasons as might induce them to consent to a change of their tribal holdings and governments upon terms that shall be just and equitable to all concerned, to be made binding only after ratification by the tribes themselves and the United States. Keeping strictly within their instructions, they have presented to these nations every argument and consideration open to them calculated to make clear the necessity, the justice, and the benefit of such a change in the tenure of their tribal property and in their tribal governments as will conform all to our national system and prepare them to become a part of it. The Commission has found, however, that those having authority to consider these proposed changes are the very persons whose interest it is to prevent them, and that the longer the present conditions continue the greater will be their gain. Every selfish instinct of those holding the power to consider propositions for a change is therefore arrayed against its exercise. They have declined directly, or ignored altogether all formal propositions for negotiation made to them, and in informal conferences have made it clear that no considerations the Commission has authority to present will induce them to voluntarily relinquish their present opportunities for vast gain and consent to share equally with all the Indian citizens that tribal property the United States originally placed in the custody of these "nations" for the common use of all, or to exchange the power they now possess to perpetuate their exclusive use of common property and dictate the character and terms of government under which these people live for anything analogous to

the institutions of our own Government by which they are surrounded. The very men who, in the manner heretofore described, have got in their personal grasp the vast tribal wealth of these "nations," elect and control the legislators in their councils, and denominate the work of this Commission as the "interference of a foreign power," not to be tolerated, and seek to punish with the penalties of treason any citizen Indian found advocating a change that shall require equal rights and equal participation.

The Commission is compelled to report that so long as power in these nations remains in the hands of those now exercising it, further effort to induce them by negotiation to voluntarily agree upon a change that will restore to the people the benefit of the tribal property and that security and order in government enjoyed by the people of the United States will be vain.

The Commission is therefore brought to the consideration of the question: What is the duty of the United States Government toward the people, Indian citizens and United States citizens, residing in this Territory under governments which it has itself erected within its own borders?

No one conversant with the situation can doubt that it is impossible of continuance. It is of a nature that inevitably grows worse, and has in itself no power of regeneration. Its own history bears testimony to this truth. The condition is every day becoming more acute and serious. It has as little power as disposition for self-reform.

Nothing has been made more clear to the Commission than that change, if it comes at all, must be wrought out by the authority of the United States. This people have been wisely given every opportunity and tendered every possible assistance to make this change for themselves, but they have persistently refused and insist upon being left to continue present conditions.

There is no alternative left to the United States but to assume the responsibility for future conditions in this Territory. It has created the forms of government which have brought about these results, and the continuance rests on its authority. Knowledge of how the power granted to govern themselves has been perverted takes away from the United States all justification for furthe delay. Insecurity of life and person and property increasing every day makes immediate action imperative.

The pretense that the Government is debarred by treaty obligations from interference in the present condition of affairs in this Territory is without foundation. The present conditions are not "treaty conditions." There is not only no treaty obligation on the part of the United States to maintain, or even to permit, the present condition of affairs in the Indian Territory, but on the contrary the whole structure and tenor of the treaties forbid it. If our Government is obligated to maintain the treaties according to their original intent and purpose, it is obligated to blot out at once present conditions. It has been most clearly shown that a restoration of the treaty status is not only an impossibility, but if a possibility, would be disastrous to this people and against the wishes of all, people and governments alike. The cry, therefore, of those who have brought about this condition of affairs, to be let alone, not only finds no shelter in treaty obligations but is a plea for permission to further violate those provisions.

The Commission is compelled by the evidence forced upon them during their examination into the administration of the so-called governments in this Territory to report that these governments in all their branches are wholly corrupt, irresponsible, and unworthy to be longer trusted with the care and control of the money and other property of Indian citizens, much less their lives, which they scarcely pretend to protect.

There can be no higher obligation incumbent upon every branch of the General Government than to exert its utmost constitutional authority to secure to this people, in common with all others within our borders, government in conformity with constitutional authorities. The Government can not abdicate or transfer to other shoulders this duty as to any portion of territory or people in the land. It

can not escape responsibility if the dark record which has now been brought to light is permitted to continue. Delay can bring nothing but increased difficulty and danger to peace and good order in the Territory. The situation calls for prompt action. These considerations lead but to one conclusion.

It is, in the judgment of the Commission, the imperative duty of Congress to assume at once political control of the Indian Territory. They have come with great reluctance to this conclusion, and have sought by all methods that might reach the convictions of those holding power in the Territory to induce them by negotiation and mutual agreement to consent to a satisfactory change in their system of government and appropriation of tribal property. These efforts have failed, and the Commission is driven to the alternative of recommending abandonment of these people to the spoliation and outrages perpetrated in the name of existing governments or the resumption by Congress of the power thus abused.

They therefore recommend immediate legislation as follows:

1. A Territorial government over the Five Civilized Tribes, adapted to their peculiarly anomalous conditions, so framed as to secure all rights of residents in the same, and without impairing the vested rights of the citizen Indian or other person not an intruder.

2. The extension of the jurisdiction of the United States courts in the Territory, both in law and equity, to hear and determine all controversies and suits of any nature concerning any right in or use and occupation of the tribal lands of the several nations, to which any citizen Indian or other person, or the tribal government of any nation, is or may be made a party plaintiff or defendant.

The Commission is confident that such a government wisely administered will restore the observance of law and preserve order among the people residing in these several nations, and make secure their lives and all just property rights. And that the determination in the United States courts of the most important and complicated questions in which the tenure of their land is unfortunately involved, lifting them out of the unhealthy and unreliable influences which prevail in the Indian courts, where now alone they are disposed of, would go far toward a solution of the difficult problem the present condition of the Territory presents.

Respectfully submitted.

HENRY L. DAWES.
FRANK C. ARMSTRONG.
ARCHIBALD S. MCKENNON.
THOMAS B. CABINISS.
ALEXANDER B. MONTGOMERY.

The SECRETARY OF THE INTERIOR.

Since the completion of the foregoing report the Commission, not having received any notice of action taken by the Choctaw and Chickasaw Nations, either in council or by committee, upon the propositions heretofore submitted by the Commission to these bodies separately, but having heard of some action being taken by them in respect to these propositions, made personal application to the secretary of the Choctaw Nation for information, and have received from him the following attested copy of resolutions adopted. They desire to make these resolutions a part of their report, without modifying, however, in any respect, the statements made or the conclusions of the Commission as set forth in the report, but for the purpose of making complete the record of the official intercourse between the Commission and the several nations, up to date.

HENRY L. DAWES, *Chairman.*

Whereas the Congress of the United States having appointed the honorable Dawes Commission to visit the five tribes within the limits of the Indian Territory for the purpose of inducing said five tribes of the Indian Territory to allot or divide our lands in severalty, now we, the committee duly appointed on the 9th day of November, A. D. 1895, by virtue and authority of the Choctaw general council, and in conjunction with the duly appointed and commissioned Chickasaw delegates from the

Chickasaw Nation having concurred and find that proposition made by the Dawes Commission in the United States and forwarded by mail to the Choctaw general council now in session, find that it was read and carefully interpreted, now do with matured minds and deliberate consideration have invited to recommend the following resolution:

Be it resolved by the general council of the Choctaw Nation assembled, That the proposition summitted to the Choctaw general council now in session does not meet with the approval in our conference or the consent of the Choctaw and Chickasaw people at large.

Be it further resolved, That we can not entertained the belief that a Christian nation as the United States Government would use fraudulent means, directly or indirectly, to deprive a weak and dependent people out of our lands now owned and held through a patent issued by the proper authority of the United States Government.

Be it further resolved, We ask the honorable Dawes Commission to make their report to Congress of the United States favoring the extension of justice to us and our peaceful homes, and ask to be permitted without molestation to possess that which is ours and only ours.

M. N. CASS, *Chairman of Committee.*

Approved, Nov. 12th, 1895.

JEFF. GARDNER, *P. C. C. N.*

This is to certify that the foregoing is a true and correct copy from the original resolution of the general council of the Choctaw Nation now on file at my office in Tushkahomma, the capitol of the Choctaw Nation.

Witness my hand and the great seal of the Choctaw Nation this the 15th day of November, A. D. 1895.

J. B. JACKSON,
National Secretary, Choctaw Nation.

53D CONGRESS, 2d Session. | SENATE. | REPORT No. 377.

IN THE SENATE OF THE UNITED STATES.

MAY 7, 1894.—Ordered to be printed.
MAY 12, 1894.—Ordered to be reprinted.

Mr. TELLER, from the Select Committee on the Five Civilized Tribes of Indians, submitted the following

REPORT:

The Senate on the 29th of March, 1894, adopted the following resolution:

Resolved, That the Committee on the Five Civilized Tribes of Indians, or any subcommittee thereof appointed by its chairman, is hereby instructed to inquire into the present condition of the Five Civilized Tribes of Indians, and of the white citizens dwelling among them, and the legislation required and appropriate to meet the needs and welfare of such Indians; and for that purpose to visit Indian Territory, to take testimony, have power to send for persons and papers, to administer oaths, and examine witnesses under oath; and shall report the result of such inquiry, with recommendations for legislation; the actual expenses of such inquiry to be paid on approval of the chairman out of the contingent fund of the Senate.

In pursuance to this resolution three of the members of the Committee on the Five Civilized Tribes of Indians, viz, Messrs. Teller, Platt, and Roach, visited Indian Territory, arriving at Muscogee on the 8th of April, and after conferring with representatives of the Indians, the white citizens, and white residents who have no right of citizenship, and also with representatives of the colored race residing in the Territory, left the Territory on the 17th of April.

Without deeming it necessary to give a detailed account of the proceedings of the committee in the Territory or elsewhere, we submit herewith a statement of the facts ascertained and the conclusions drawn therefrom.

The Indian Territory contains an area of 19,785,781 acres, and is occupied by the five civilized tribes of Indians, consisting of the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles. Each tribe occupies a separate and distinct part, except that the Choctaws and Chickasaws, though occupying separately, have a common ownership of that part known as the Choctaw and Chickasaw territory, with rights and interests as recognized in their treaties as follows: The Choctaws, three-fourths, and the Chickasaws, one-fourth.

The character of their title, the area of each tribe, together with the population and an epitome of the legislation concerning these Indians during the last sixty-five years, is shown by the report of the Committee on Indian Affairs, submitted to the Senate on the 26th day of July, 1892, and we insert so much of said report as touches on the points above mentioned.

With reference to the present relations between the U. S. Government and the five civilived tribes, and the advantages to be derived by the Indians as well as the United States by the surrender of such governments and their incorporation into our system, the committee submits the following summary:

(1) *Cherokees.*—In the preamble to the treaty of May 6, 1828, the United States guarantees the Cherokee Nation, in their lands west of the Mississippi, a permanent home "that shall never, in all future time, be embarrassed by having extended

around it the lines, or placed over it the jurisdiction of a Territory or State, nor be pressed upon by the extension, in any way, of any of the limits of any existing Territory or State." (7 Stats., p. 311.) By the fifth article of the treaty of December 29, 1835, the United States agreed that the lands ceded to the Cherokees by that treaty should, in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they should secure to the Cherokee Nation the right, by their national councils, to make and carry into effect all such laws as they might deem necessary for the government and protection of the persons and property within their own country belonging to their people, or such persons as had connected themselves with them, if not inconsistent with the Constitution of the United States and such acts of Congress as had been or might be passed, regulating trade and intercourse with the Indians. (7 Stats., p. 481.) By the seventh article of said treaty it is stipulated that the Cherokee Nation "shall be entitled to a Delegate in the House of Representatives of the United States whenever Congress shall make provision for the same" (p. 482).

By the second article of the treaty of August 6, 1846, it is provided that "laws shall be passed for equal protection, and for the security of life, liberty, and property; and full authority shall be given by law to all or any portion of the Cherokee people, peaceably to assemble and petition their own government, or the Government of the United States, for the redress of grievances, and to discuss their rights." (9 Stats., p. 872.) The laws provided in this article, it is presumed, are such as were thereafter to be enacted by the Cherokee council.

The fourth and fifth articles of the treaty of 1866 contain stipulations concerning Cherokees, freed persons, and free negroes who may elect to reside in a specified district within the Cherokee domain, and the sixth article provides as follows:

"The inhabitants of the said district hereinbefore described shall be entitled to representation according to the number in the national council, and all laws of the Cherokee Nation shall be uniform throughout said nation; and should any such law, either in its provisions or in the manner of its enforcement, in the opinion of the President of the United States, operate unjustly or injuriously in said district, he is hereby authorized and empowered to correct such evil, and to adopt the means necessary to secure the impartial administration of justice as well as fair and equitable application and expenditure of the national funds as between the people of this and every other district in said nation." (14 Stats., 800.)

In article 12 the Cherokees give their consent to a general council consisting of delegates elected by each nation or tribe lawfully residing within the Indian Territory, to be annually convened in said Territory, with powers as therein prescribed. The sixth subdivision of this article reads as follows:

"The members of said council shall be paid by the United States the sum of four dollars per diem during the term actually in attendance on the sessions of said council, and at the rate of four dollars for every twenty miles necessarily traveled by them in going from and returning to their homes, respectively, from said council, to be certified by the secretary and president of the said council." (*Ibid.*, 803.)

The twenty-second article provides for the survey and allotment of their lands whenever the national council shall request it. (*Ibid.*, 803.)

By the twenty-sixth article the Cherokees are guaranteed peaceable possession of their country and protection against domestic feuds, insurrections, hostile tribes, and intrusion from all unauthorized citizens of the United States; and by the thirty-first article thereof it is expressly stipulated that nothing therein contained shall be construed as a relinquishment by the Cherokee Nation of any claims or demands under the guaranties of former treaties, except as therein expressly provided (p. 805).

(2) *Chickasaws.*—By the second article of the treaty of May 24, 1834, the United States consented to protect and defend them in their home west of the Mississippi, when selected, against the inroads of any other tribe of Indians, and from whites, and agreed to keep them without the limits of any State or Territory. (7 Stats., p. 450.)

By the seventh article of the joint treaty of April 28, 1866, with the Choctaws, the Chickasaws and Choctaws agreed to such legislation as Congress and the President of the United States might deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however,* That such legislation should not in anywise interfere with or annul their present respecive legislatures or judiciaries or the rights, laws, privileges, or customs of said nations, respectively. (14 Stats., p. 771.)

This eighth article provided for a national council of the various tribes of Indian Territory, and the ninth clause thereof stipulates that "whenever Congress shall authorize the appointment of a delegate from said Territory it shall be the province of said council to select one from among the nations represented in said council" (p. 773).

The eleventh article provides for the survey and allotment of their lands, whenever their national councils should request it (p. 774). The Chickasaws did, by their legislative council, give said assent, but the Choctaw council has never agreed

thereto, the tenure of the lands being such as to require joint and concurrent action of the two bodies.

(3) *Choctaws.*—The fourth article of the treaty of September 27, 1830, granted the Choctaw Nation of Indians exclusive jurisdiction and self-government over the persons and property of the nation, so that no Territory or State should ever have a right to pass laws for the government of that nation and their descendants; and that no part of the land granted them should ever be embraced in any Territory or State, and further would secure forever said nation from and against all laws except such as from time to time might be enacted in their own national council, not inconsistent with the Constitution, treaties, and laws of the United States and except such as might be enacted by Congress in exercising legislation over Indian affairs as required by the Constitution. (7 Stats., p. 333.)

By the fifth article the United States guarantees protection to said Indians from domestic strife and foreign enemies on the same principles that the citizens of the United States are protected (p. 334), and by the twenty-second article the Choctaws express "a solicitude that they might have the privilege of a Delegate on the floor of the House of Representatives extended to them (p. 338).

By the seventh article of the joint treaty of April 28, 1866, they agree with the Chickasaws to the legislation hereinbefore recited under the head "Chickasaw." Provision for a Delegate to Congress is set forth in the eighth article, and for survey and allotment of lands in the eleventh article of said joint treaty. (*See* Chickasaw.)

(4) *Creeks.*—By the fourteenth article of the treaty of March 24, 1832, the Creek Nation of Indians are guaranteed a patent for their lands west of the Mississippi agreeably to the third section of the act of Congress of May 2 (28), 1830; also that no State or Territory should ever have a right to pass laws for the government of said Indians, but that they should be allowed to govern themselves, so far as might be compatible with the general jurisdiction which Congress might think proper to exercise over them. (7 Stats., p. 368.)

The fourth article of the joint treaty of August 7, 1856, with the Creek and Seminole Indians provides that no State or Territory shall pass laws for said tribes, and no portion of their lands defined in said treaty shall ever be embraced or included within or annexed to any Territory or State, nor shall either or any part of either ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same. (1 Stats., p. 700.)

The fifteenth article of said treaty secures the unrestricted right of self-government and full jurisdiction over person and property within their respective limits, excepting all white persons, with their property, who are not, by adoption or otherwise, members of either the Creek or Seminole tribe, so far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof regulating trade and intercourse with the Indian tribes (p. 703).

The eighteenth article provides for the protection of said tribes of Indians from domestic strife, hostile invasion, and aggression by other Indians or white persons not subject to their jurisdiction and law (p. 704).

By the tenth article of the treaty of June 14, 1866, the Creeks agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however,* That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. (14 Stats., p. 788.)

(5) *Seminoles.*—By the seventh article of the treaty of March 21, 1866, the Seminoles agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided,* That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. (14 Stats., p. 758.)

Neither the Creeks nor Seminoles in any joint treaty, nor by this treaty of 1866, express any desire or wish upon the subject of a Delegate to Congress.

The Creeks having, on the 10th of July, 1861; the Choctaws and Chickasaws on the 12th of July, 1861; the Seminoles on the 1st of August, 1861, and the Cherokees on the 7th of October, 1861, made treaties, respectively, with the Confederate States, the President, by the Indian appropriation act of July 5, 1862 (12 Stats., p. 528), was authorized by proclamation to declare all treaties existing between the United States and said tribes to be abrogated, if, in his opinion, it could be done consistently with good faith and legal and national obligations. (*See* R. S., 2080.)

Not desiring to take advantage of or to enforce the penalties therein authorized, the President, in September, 1865, appointed a commission empowered to make new treaties with the tribes residing in the Indian Territory upon a basis containing seven propositions, the sixth of which was that "it is the policy of the Government, unless other arrangements be made, that all the nations and tribes in the Indian Territory be formed into one *consolidated* government after the plan proposed by the Senate *of the United States in a bill* for organizing the Indian Territory."

The representatives of the various tribes were assembled at Fort Smith and signed what is known as the Fort Smith treaty—made preliminary to the subsequent treaties of 1866.

The Cherokees held that "the consolidation of all the nations and tribes in the Indian Territory into one government is open to serious objection. There are so many, and in some instances antagonistic, grades of tastes, customs, and enlightenment that to throw the whole into one heterogeneous government would be productive of inextricable confusion; the plan proposed by the U. S. Senate may obviate the difficulties which now appear so patent to us." (*See* Annual Report of Commissioner of Indian Affairs for 1865, p. 306.)

The Chickasaws reported, "We thought the Government would first make a treaty of peace with us all. Indians are different from whites. They are vindictive; hatred lasts long with them. Not so with whites. The Government must settle the difficulty; the Indians can not. That done, let us be centralized, and a government established in the Indian Territory (p. 317)."

The Creeks reported that: "As to a Territorial form of government, we have to say that we know but little, but prefer our tribal condition (p. 341)."

The loyal Creeks signified to the Commissioner their entire assent to most of the propositions, including Territorial government (p. 341).

The Seminoles consented to the sixth proposition, then afterwards rescinded their action and asked that the question stand open for future consideration (p. 351).

In the subsequent treaties made in 1866 the Choctaws and Chickasaws by the seventh article, the Creeks by the tenth article, and the Seminoles by the seventh article, agreed, "to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however,* That such legislation shall not in anywise interfere with or annul their present tribal organization, or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs."

Under the provision of these treaties the Indians have agreed that Congress may legislate for the better administration of justice and the protection of the rights of property and person within the limits of the present Indian Territory so far as it relates to the Choctaw, Chickasaw, Creek, and Seminole Indians.

Census Bulletin No. 25 gives the population of the Five Civilized Tribes, including colored Indian citizens and claimants, as 66,289, as follows:

Cherokee Indians	25,357	Colored	4,242	Total		29,599
Chickasaw Indians	3,464	do	3,718	do		7,182
Choctaw Indians	9,996	do	4,401	do		14,397
Creek Indians	9,296	do	5,341	do		14,632
Seminole Indians	2,539	do	22	do		2,561
						68,371
Deduct number of colored persons probably not members of tribes (estimated)						3,500
						64,871
Indians other than Chickasaws in that nation						1,161
Indians other than Choctaws in that nation						257
Population of the Five Civilized Tribes:						
Indians						52,065
Colored Indian citizens and claimants						14,224
Total						66,289

The same bulletin discloses the fact that there are white and colored persons not Indians or recognized as members of the Indian nations within the limits of the Five Civilized Tribes, as follows:

White persons in—	
Cherokee Nation	27,176
Chickasaw Nation	49,444
Choctaw Nation	27,991
Creek Nation	3,280
Seminole Nation	96
	107,989
Colored persons in the Five Civilized Tribes probably not members of the tribes (estimated)	3,500
Chinese in the Chickasaw Nation	6
Total	111,493

The following table shows the amount of land to which each man, woman, and child would be entitled if the lands were divided in severalty:

Statement showing per capita distribution of the whole reservation among the people of the respective tribes.

Tribe.	Area of the reservation.	If to persons of Indian blood only.		If to persons of Indian blood and to the colored persons claiming rights in the respective tribes, as set out in Census Bulletin No. 25.	
		Population.	Acres to each.	Population.	Acres to each.
Cherokees	5,031,351	25,357	198·4	29,559	170
Chickasaws	*4,650,935	3,464	1,342·6	7,182	647·5
Choctaws	*6,688,000	9,996	669	14,397	464·4
Creeks	3,040,495	9,291	327·3	14,632	207·7
Seminoles	375,000	2,539	147·7	2,561	146·4

*The lands held by the Choctaw and Chickasaw Indians are held by them in common with rights and interests as recognized in their treaties as follows: The Choctaws, three-fourths; the Chickasaws, one-fourth.

At the breaking out of the rebellion the Five Civilized Tribes entered into treaties with the Confederate States, so called, and it was claimed had forfeited treaty rights.

But by the new treaties, however, former treaty rights, not inconsistent with the treaties of 1866, were restored and guaranteed by the United States.

At this time it seemed to be the policy of the Government to make an exclusive Indian Territory, to which should be removed other Indians, so that the whole Territory should become filled with Indian tribes alone. This policy of the Government seems to have included the idea of a Territorial Government, in which all of the tribes which might occupy the Indian Territory, as well as the Five Civilized Nations, should have representation after the manner of other Territoral organizations.

The territory which was to be thus organized into what might be called a distinctly Indian government was, until the organization of the Territory of Oklahoma, marked upon our maps and known as the Indian Territory, deriving that name from the plan of the Territorial organization already alluded to.

An article was inserted in each of the treaties made with the Five Civilized Tribes in 1866, by which they consented to become members of such Indian Territoral government. This article in the Cherokee treaty is article 12, and is identical with similar articles found in the other treaties. The president of the legislative council was to be designated by the Secretary of the Interior."

The plan thus proposed was never carried into execution; and a large part of the lands (probably more than one-half) which, under the policy then mapped out, were to have been occupied by Indian tribes and consolidated into one Territorial government, has been opened for settlement, and now comprises the Territory of Oklahoma. It is essential to bear in mind this policy of the Government, and the consent of the Five Civilized Tribes, as expressed in said treaties, for a thorough and correct understanding of many of the provisions found in those treaties.

In the report of the Committee on Indian Affairs, mentioned above, the Indian population is given as 58,331. The corrected census report for 1890, gives the Indian population at 50,055, and is given as follows:

Five Civilized Tribes, Indians living in the tribes	45,494
Other Indians including some Five Civilized Tribes Indians	4,561
Total Indians	50,055

But in addition to this 50,055 Indians there are large numbers of claimants to Indian citizenship who may or may not be Indians, within the provision of our treatise. These are put down as 18,636, and include the colored people whose rights of Indian citizenship are admitted as well as a large number who are not recognized by the Indian authorities as entitled to the rights of Indian citizenship, but who claim to be legally Indian citizens.

According to the census report, then, the population is as follows: Indians, 50,055; colored Indians, colored claimants to Indian citizenship, freedmen, and colored, wholly or in part, 18,636; Chinese, 13; whites, 109,393. Whites and colored on military reservation, 804; population of Quapaw Agency, 1,281, or a total of 180,182.

Since the taking of the census of 1890, there has been a large accession to the population of whites who make no claim to Indian citizenship, and who are residing in the Indian Territory with the approval of the Indian authorities. It is difficult to say what the number of this class is, but it can not be less than 250,000, and it is estimated by many well-informed men as much larger than that number, and as high as 300,000.

It is said that in and about McAlester there are about 5,000 white coal miners, and at Lehigh, about 6,000. In many sections the country is thickly settled with white farmers who farm the lands occupied by them under lease granted to them by individual Indians, or as the employés of Indians. To such an extent has this character of settlement and occupation gone, that in some agricultural sections the whites outnumber the Indians ten to one; this is especially true in the section occupied by the Chickasaws, who number only about 3,500, while the white population is variously estimated at from 50,000 to 70,000.

Flourishing towns have grown up along the lines of the railroads, composed wholly of white people. The town of Ardmore, in the Chickasaw country is said to contain 5,000 white people and not to exceed 25 Indians. Duncan and Purcell contain a population of from 1,000 to 1,500, composed of white people. The town of Muscogee, in the Creek country, contains a population of from 1,200 to 1,500 white people, and many other towns of from 500 to 1,500 people are known as "white towns." It is rare to see an Indian in any of these towns, except as they come in from their farms to dispose of their produce or purchase goods of the white trader.

Outside of the Cherokee country there are no laws for the organization of municipal governments for these growing towns, and no means by which the population of these towns can establish and maintain streets and sidewalks or organize and maintain a constabulary, such as has been found indispensable in urban communities.

The entire Indian Territory is well watered, with considerable forest and, in some sections, very excellent timber lands. Coal is found in nearly all parts of the Territory, and especially in the Choctaw and Chickasaw countries, and it is of an excellent character. The climate is good, the winters are mild, the soil productive, and the natural wealth very great. It is believed that the hilly country, sometimes called the mountain region, contains valuable minerals. It is certainly capable of maintaining a large population in independence and comfort.

This section of country was set apart to the Indian with the avowed purpose of maintaining an Indian community beyond and away from the influence of white people. We stipulated that they should have unrestricted self-government and full jurisdiction over persons and property within their respected limits, and that we would protect them against intrusion of white people, and that we would not incorporate them in a political organization without their consent. Every treaty, from 1828 to and including the treaty of 1866 was based on this idea of exclusion of the Indians from the whites and nonparticipation by the whites in their political and industrial affairs. We made it possible for the Indians of that section of country to maintain their tribal relations and their Indian polity, laws, and civilization if they wished so

to do. And, if now, the isolation and exclusiveness sought to be given to them by our solemn treaties is destroyed, and they are overrun by a population of strangers five times in number to their own, it is not the fault of the Government of the United States, but comes from their own acts in admitting whites to citizenship under their laws and by inviting white people to come within their jurisdiction, to become traders, farmers, and to follow professional pursuits.

It must be assumed in considering this question that the Indians themselves have determined to abandon the policy of exclusiveness, and to freely admit white people within the Indian Territory, for it can not be possible that they can intend to demand the removal of the white people either by the Government of the United States or their own. They must have realized that when their policy of maintaining an Indian community isolated from the whites was abandoned for a time, it was abandoned forever.

We did not hear from any Indian the suggestion that the white people there, with the consent of the Indian, should be removed.

We do not overlook the fact that there is a class of white people denominated by the Indians as intruders, who are not there with the approval of the Indians, but the number of this class is so small as compared with the white population not claiming rights of citizenship that they may not be considered in this connection. The United States was bound by its treaties to remove such whites as made an unauthorized settlement in the Indian Territory, and is now taking measures to remove from the Cherokee country a large band of such intruders. These intruders claim to be Indian citizens, and that they were invited by the Cherokee authorities to reside within the Territory, but the Cherokee authorities hold that they are not Cherokees. We believe there has been but little complaint in other sections of the Indian Territory of intruders.

The Indians of the Indian Territory maintain an Indian government, have legislative bodies and executive and judicial officers. All controversies between Indian citizens are disposed of in these local courts; controversies between white people and Indians can not be settled in these courts, but must be taken into the court of the Territory established by the United States. This court was established in accordance with the provision of the treaties with the Choctaws, Chickasaws, Creeks, and Seminoles, but no such provision seems to have been made in the treaty with the Cherokees. We think it must be admitted that there is just cause of complaint among the Indians as to the character of their own courts, and a good deal of dissatisfaction has been expressed as to the course of procedure and final determination of matters submitted to these courts. The determination of these courts are final, and, so far, the Government of the United States has not directly interfered with their determinations. Perhaps we should except the recent case where the Secretary of the Interior thought it his duty to intervene to prevent the execution of a number of Choctaw citizens.

As the Indian courts established within the limits of the Five Civilized Tribes had jurisdiction only of matters civil or criminal arising between members of the same tribe, it became necessary to provide courts with jurisdiction over criminal and civil matters arising between Indians of different tribes, and between white citizens and Indian citizens. Accordingly, by the act of January 31, 1877, the "country lying west of Missouri and Arkansas, known as the Indian Territory," was attached to the western district of Arkansas.

The Indian Territory at that time included what is now the territory of the Five Civilized Tribes, together with the territory now embraced within the limits of Oklahoma. Very few white people were then residents within the Indian Territory, but as the practice of the Indians to admit white citizens into their Territory increased, it was found that the jurisdiction conferred upon the U. S. court in the State of Arkansas did not meet the requirements of the situation.

Persons committing offenses within the Territory, not punishable in the Indian courts, were taken, in some instances, a distance of nearly 600 miles to the court at Fort Smith; and parties having civil controversies were not able to maintain their rights on account of the distance to be traveled and the expense entailed by proceedings in the Fort Smith court. So, by the act of January 6, 1883, that part of the Indian Territory lying north of the Canadian River and east of Texas and the one hundredth meridian not occupied by the Creek, Cherokee, and Seminole tribes, was annexed to and made part of the district of Kansas, and the U. S. district courts at Wichita and Fort Scott were given original and exclusive jurisdiction over all offenses committed within that territory against any of the laws of the United States. By the same act that part of the Indian Territory not annexed to the district of Kansas, and not set apart and occupied by Cherokee, Creek, Choctaw, Chickasaw, and Seminole tribes, was annexed to the northern district of Texas, and jurisdiction was given to that court over all offenses committed within the limits of the territory last named.

Prior to March 1, 1889, there was no court whatever in the Territory, except the Indian courts. But Congress, by act of that date, established a "U. S. court in the Indian Territory," extending over the entire Territory, including the present limits of Oklahoma and the Five Civilized Tribes, with exclusive jurisdiction over all offenses against the laws of the United States committed within the Indian Territory not punishable by death or imprisonment at hard labor, and jurisdiction in civil cases arising between citizens of the United States, residents of the Indian Territory, when the value of the thing in controversy or damages claimed amounted to not more than $100; and also jurisdiction over all controversies arising out of mining leases or contracts for mining coal made by the Indians. Two terms of said court were to be held each year at Muscogee, in the Indian Territory.

By section 17 of the same act the land embraced within the Chickasaw Nation and a portion of the Choctaw Nation, and all the part of the Indian Territory not theretofore annexed to the district of Kansas, was annexed to the eastern district of Texas. This left the land embraced within the Cherokee Nation and a portion of the Choctaw Nation attached to the western district of Kansas, and a portion of the Indian Territory lying north of the Canadian River attached to the judicial district of Kansas. Thus the U. S. courts at Paris, Tex., Fort Smith, Ark., and Fort Scott, Kans., retained jurisdiction, respectively, over all offenses punishable by death or imprisonment at hard labor arising within the Indian Territory, as then existing, except matters arising between Indians of the same tribe, which were still punishable only in the Indian courts.

By act of May 2, 1890, all that portion of the Indian Territory except that occupied by the Five Civilized Tribes and by the Indian tribes within the Quapaw Agency was included within the boundaries of the Territory of Oklahoma; but the Cherokee Outlet and the Public Land Strip and the Indian reservations included within said boundaries were *not to become* fully a part of said Territory until the proclamation of

the President should be made to that effect, and in case of the Cherokee Outlet and the Indian reservations not until the title of the Indians should be extinguished.

By the same act a new Indian Territory was created, consisting of all that portion of the Indian Territory as it had formerly existed not then included within the boundaries of the Territory of Oklahoma; and the same was divided into three divisions for the purpose of holding the terms of the court established at Muscogee by the act of March 1, 1889. The places for holding said court were fixed at Muscogee in the Creek country, at South MacAlester in the Choctaw country, and at Ardmore in the Chickasaw country. The jurisdiction of the country was further defined, and certain general laws of the State of Arkansas were made applicable to the Indian Territory, except as to causes, civil and criminal, in which members of the respective Indian tribes, by nativity or adoption, were the only parties.

The act of May 2, 1890, authorized the appointment of three commissioners within each of the divisions of the U. S. court in the Indian Territory, who, in addition to the powers of commissioners of the circuit court, should be ex-officio notaries public and have power to solemnize marriages, and were given the powers of justices of the peace of the State of Arkansas, but limited in their jurisdiction in civil suits to $100, with an appeal from their judgment.

It is estimated that at the present time there are between 250,000 and 300,000 white people, not citizens of the Indian nations by marriage or adoption, residing within the Indian Territory. They are not and can not be subject to the laws of the Indian nations, and can not obtain or enforce their rights in the Indian courts. These courts have no jurisdiction over them, either civil or criminal. All jurisdiction, therefore, over matters arising between white citizens in the Indian Territory and between white citizens and Indians, and between Indians of different tribes, is thus vested partly in the U. S. courts at Fort Smith, Ark.; Paris, Tex., and partly in the U. S. court established in the Indian Territory. This latter court has no jurisdiction of felonies, and no other court has final jurisdiction over misdemeanors, the powers of the commissioners in misdemeanors being merely those of an examining magistrate.

There is much conflict of jurisdiction in matters other than felonies between the U. S. courts and the courts at Fort Smith, Paris, and the Indian court within the Indian Territory. New statutes have been passed relating to offenses in the Indian Territory, and the statutes of Arkansas, which have been extended over the Territory, raise frequent and difficult questions of jurisdiction. The distances which parties are required to travel in cases where jurisdiction is claimed by the courts at Fort Smith and Paris are great, and the expense of deciding causes in those courts, by reason of the distance to be traveled and the time necessarily spent in their determination, is enormous. The court established for the Indian Territory, having cognizance of all minor offenses and of the smallest civil controversies, becomes the only court having police powers within the Territory, so that parties charged with the smallest misdemeanors are often taken over 200 miles to court for trial, and in civil controversies involving the smallest amounts may be compelled to resort to a court 200 or 300 miles distant. And this court is so burdened with business that prompt disposition of its cases, either criminal or civil, is utterly impossible. It is absolutely the only court of final jurisdiction administering justice in matters

large or small in a Territory as large as the State of Indiana, for a people numbering now at least 250,000 and rapidly increasing.

The conditions set forth result in a practical denial of justice in the Indian Territory, except in matters of paramount importance, and in these only after much delay. The criminal business of the Territory is transacted at enormous expense. Cases of the smallest importance, like ordinary assaults, often cost the Government from $200 to $500 each, by reason of the distance traveled by the deputy marshals in taking the prisoner charged to court and the fees of witnesses for travel and attendance. The temptation to arrest persons for trivial offenses under such conditions, where the deputy marshals receive such unusual fees, is very great, and complaint of the misuse of power in arrests and prosecutions is frequent. The expense of prosecuting crimes and maintaining courts in the Indian Territory amounts to about one-seventh of the judicial expense of the United States, and this not because crime is more prevalent in the Indian Territory than is usual in new and unsettled countries, but because of the system under which justice is supposed to be administered therein. Such glaring and unbearable evils can not be fully remedied until the question of political and judicial jurisdiction shall be finally changed and a Territorial or State government established.

A partial remedy, however, may in the opinion of the committee be applied at the present time. One judge can not dispose of the criminal and civil matters arising among 250,000 people with justice to the parties and reasonable dispatch of business. Moreover, misdemeanors and civil suits of limited amount should be disposed of mainly in the immediate locality where the offenses are committed or where the cause of action arises. The committee is of opinion that two additional judges for the court should be appointed, thus making one judge for each division, and that additional commissioners should be appointed by the court, and that such commissioners should have within their districts, to be limited and defined, final jurisdiction in misdemeanors where the punishment does not exceed a fine of $50 or imprisonment for six months, or both, with a right of appeal to the U. S. court in the Indian Territory, and should have final jurisdiction of civil suits arising within their respective jurisdictions where the value of the matter in controversy or damages claimed shall not exceed the sum of $300, with the right of appeal to said court; that the jurisdiction now conferred upon the U. S. district courts at Fort Smith and Paris should be taken away, and jurisdiction in all matters not punishable by said U. S. courts in Arkansas and Texas should be conferred upon the U. S. court in the Indian Territory.

The reason urged against this transfer of jurisdiction from the courts in Arkansas and Texas to the U. S. court in the Indian Territory no longer exists. It was first conferred because there was no court in the Indian Territory. It has been continued since the establishment of a court there because of the claim that it was impossible to secure proper juries to serve in the Indian Territory. However potent that reason may have been in the past, it can no longer be successfully maintained that jurors can not be found and are not found in the Indian Territory equally competent to try causes of the highest importance with those obtained in the adjoining States of Arkansas, Texas, and Kansas. The white people of the Indian Territory will compare favorably with the people of the adjoining States, and jurors selected from among such population may as safely be trusted to do justice. The change in the judicial system of the Territory thus out-

lined will, in the opinion of the committee, result in a great reduction of expense to the Government and a far better administration of justice than now exists. The present system is intolerable.

The Indians maintain schools for their own children. The Choctaws, Cherokees, and Creeks maintain schools for the children of recognized colored citizens, but the Chickasaws have denied to these freedmen not only the right of suffrage, especially provided for in the treaty of 1866, but have also denied to the children of freedmen the right to participate in their schools. We find in the Chickasaw country a freedmen population somewhat in excess of that of the Indian population, not only deprived of citizenship, but denied the privilege of schools, so that the children of that class are growing up in ignorance except in a few cases where schools have been maintained by individual means for the education of the freedmen children. This is in plain and open violation of the treaty of 1866.

The large white population of the Indian Territory are without the means of maintaining schools, except by means of rate bills. We believe there is nowhere else in the United States a population so large that has not the benefit of the truly American system of education—the public schools. No public schools are possible for this class of our citizens while the present condition of affairs continues in the Indian Territory.

It may be said that these people went to the Indian Territory with the knowledge that the education of their children would be left to their individual efforts, and therefore they ought not to complain. We do not stop to inquire whether the parents of these children complain or not—the nation at large has the right to protest against a condition that deprives the children of 200,000 or 300,000 white and several thousand colored people of the opportunity to acquire an education that will fit them for the discharge of the duties of citizenship, which they have the right to exercise in other parts of the country if they have not in the Indian Territory. It is not the concern of the parents alone, nor of the children alone, but of all the people of the United States, and it is a matter of concern to the citizens of those States contiguous to the Indian Territory. Common humanity demands that we take steps to secure to the people the advantages of education, even if they no not appreciate such advantages.

The theory of the Government was when it made title to the lands in the Indian Territory to the Indian tribes as bodies politic that the title was held for all of the Indians of such tribe. All were to be the equal participators in the benefits to be derived from such holding. But we find in practice such is not the case. A few enterprising citizens of the tribe, frequently not Indians by blood but by intermarriage, have in fact become the practical owners of the best and greatest part of these lands, while the title still remains in the tribe—theoretically for all, yet in fact the great body of the tribe derives no more benefit from their title than the neighbors in Kansas, Arkansas, or Missouri.

According to Indian law (doubtless the work of the most of the enterprising class we have named) an Indian citizen may appropriate any of the unoccupied public domain that he chooses to cultivate. In practice he does not cultivate it, but secures a white man to do so, who takes the land on lease of the Indian for one or more years according to the provision of the law of the tribe where taken. The white man breaks the ground, fences it, builds on it, and occupies it as the tenant of the Indian and pays rental either in part of the crop or in cash, as he may agree with his landlord.

Instances came to our notice of Indians who had as high as 100 tenants, and we heard of one case where it was said the Indian citizen, a citizen by marriage, had 400 holdings, amounting to about 20,000 acres of farm land. We believe that may be an exceptional case, but that individual Indians have large numbers of tenants on land not subdued and put into cultivation by the Indian, but by his white tenant, and that these holdings are not for the benefit of the whole people but of the few enterprising ones, is admitted by all. The monopoly is so great that in the most wealthy and progressive tribe your committee were told that 100 persons had appropriated fully one-half of the best land. This class of citizens take the very best agricultural lands and leave the poorer land to the less enterprising citizens, who in many instances farm only a few acres in the districts farthest removed from the railroads and the civilized centers.

As we have said, the title to these lands is held by the tribe in trust for the people. We have shown that this trust is not being properly executed, nor will it be if left to the Indians, and the question arises what is the duty of the Government of the United States with reference to this trust? While we have recognized these tribes as dependent nations, the Government has likewise recognized its guardianship over the Indians and its obligations to protect them in their property and personal rights.

In the treaty with the Cherokees, made in 1846, we stipulated that they should pass laws for equal protection, and for the security of life, liberty, and property. If the tribe fails to administer its trust properly by securing to all the people of the tribe equitable participation in the common property of the tribe, there appears to be no redress for the Indian so deprived of his rights, unless the Government does interfere to administer such trust.

Is it possible because the Government has lodged the title in the tribe in trust that it is without power to compel the execution of the trust in accordance with the plain provisions of the treaty concerning such trust? Whatever power Congress possessed over the Indians as semidependent nations, or as persons within its jurisdiction, it still possesses; notwithstanding the several treaties may have stipulated that the Government would not exercise such power, and therefore Congress may deal with this question as if there had been no legislation save that which provided for the execution of the patent to the tribes.

If the determination of the question whether the trust is or is not being properly executed is one for the courts and not for the legislative department of the Government then Congress can provide by law how such question shall be determined and how such trust shall be administered, if it is determined that it is not now being properly administered.

It is apparent to all who are conversant with the present condition in the Indian Territory that their system of government can not continue. It is not only non-American, but it is radically wrong, and a change is imperatively demanded in the interest of the Indian and whites alike, and such change can not be much longer delayed. The situation grows worse and will continue to grow worse. There can be no modification of the system. It can not be reformed. It must be abandoned and a better one substituted. That it will be difficult to do your committee freely admit, but because it is a difficult task is no reason why Congress should not at the earliest possible moment address itself to this question.

We do not care to at this time suggest what, in our judgment, will be the proper step for Congress to take on this matter, for the commis-

sion created by an act of Congress, and commonly known as the Dawes Commission, is now in the Indian Territory with the purpose of submitting to the several tribes of that Territory some proposition for the change in the present very unsatisfactory condition of that country. We prefer to wait and see whether this difficult and delicate subject may not be disposed of by an agreement with the several tribes of that Territory. But if the Indians decline to treat with that commission and decline to consider any change in the present condition of their titles and government the United States must, without their aid and without waiting for their approval, settle this question of the character and condition of their land tenures and establish a government over whites and Indians of that Territory in accordance with the principles of our constitution and laws.

As the matters submitted are so complicated and of such grave importance, the committee has thought proper to submit this preliminary report, and hopes, upon further investigation, to be able to make such further and more specific recommendation as to necessary legislation as will lead to a satisfactory solution of this difficult question.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 10, 1894.—*Resolved*, That the Report of the Commission appointed to negotiate with the Five Civilized Tribes of Indians, known as the Dawes Commission, which report is attached to the Annual Report of the Secretary of the Interior as Appendix B, be printed as a Senate document.

Attest: WM. R. COX, *Secretary.*

B.

REPORT OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES.

WASHINGTON, D. C., *November 20, 1894.*

SIR: The Commission to the Five Civilized Tribes, appointed under the sixteenth section of an act of Congress making appropriations for the Indian service, approved March 3, 1893, report what progress has thus far been made by it.

Immediately upon receiving their instructions they entered upon their work and made their headquarters, on reaching the Territory, at Muskogee, in the Creek Nation, removing it in March to South McAlester, in the Choctaw Nation, where it still remains.

Upon arriving in the Territory the commission immediately sent to the chief or governor of each tribe an official notice of their appointment and of their authority and the objects of their mission in accord with their instructions, and requested an early conference with him, or those who might be authorized to confer with this commission, at such time and place as might be designated by him. Such conferences were held separately with the chief and duly authorized commission of each of the tribes. At each of these conferences the commission explained with great pains the wishes of the Government and their authority to enter into negotiations with them for an allotment of their lands and exchange of their tribal for a Territorial government. They were listened to attentively, and were asked many pertinent questions, which were fully answered so far as their authority justified. No definite action was taken at either of these conferences, though the indications were adverse to a favorable result. They all asked for time to consider, and promised a renewal of the conferences.

Afterwards, at the suggestion of one of the chiefs, an international council, according to their custom on important questions, consisting of delegates appointed for that purpose from each of the tribes, except the Seminoles, who took no part in it, was held to confer upon the purposes of this commission. The commission attended this conference, and on request presented the subject to them more elaborately and fully than had been done before. The conference continued three days, and at first the views of the commission were treated with seriousness, and the impression seemed favorable in the body that a change in their present condition was necessary and was imminent, and that it was wise for them to entertain our propositions. During the deliberations, however, telegraphic dispatches from Washington reached them indicating that the sentiment of the Government, and especially of Congress, from whose action they had most to apprehend, was strongly in favor of what they maintained as "the treaty situation," and that no steps would be taken looking to a change unless they desired it. This put an effectual check upon the disposition to negotiate, and the result at this international conference was the adoption of resolutions strongly condemning any change and advising the several tribes to resist it. Each of the tribes subsequently acted in accord with this advice, and several of them took official action condemning any change, and refusing to negotiate upon any terms looking to a change in the present condition in respect either to their form of government or the holding of their domains. This refusal has been repeated many times in these tribes in several ways since, and stands to-day as the official position of the governments of those who have taken action thereon.

It was apparent that this convention was dominated by the tribal officials and those having *large holdings of land.*

CREEK NATION.

On the 23d of January, a commission appointed by the chief of the Creek tribe met us at Muskogee to confer with us, but had no authority whatever, as they stated, to enter into negotiations or conclude any agreement with us. After a conference, however, they expressed a desire that we should make any appointment to meet and address their people at Okmulgee, their capitol, and explain the policy and purposes of the U. S. Government in sending us to the Territory, which we accordingly did on the 3d day of April, 1894. Our audience was large, embracing the chief, council, and Creek citizens. A number of prominent citizens, who have almost absolute control of the government and a monopoly of the lands of the tribe, were present, actively opposing the work of this commission.

After arriving at Okmulgee, we had frequent and free conversations with quite a number of Creek citizens, who expressed themselves favorable to the propositions we were submitting, and detailed the poverty-stricken condition of the common people, and the consequent necessity for a change. They also expressed their desire that their council should accede to the proposed changes. After we had addressed fully and in detail the meeting upon the subject of our mission, we were followed by the chief, who addressed them in the Creek language, which was not interpreted and which we therefore could not understand. But we were informed by one present, and believe truthfully, that the chief stated to them that if they acceded to the propositions of the Government and accepted allotment they would each receive a lot of land only 4 by 8 feet, and thereupon called for a vote of the meeting upon the propositions discussed by us, and all of the meeting passed over to the side against our propositions. Immediately thereafter the council met and passed resolutions declining to appoint a commission to treat with us, or take any steps looking to the allotment of lands or change of government.

That our propositions to the Creek tribe might be definite and specific, and the action of their council thereon free from doubt and misconstruction, we, on the 25th day of July, 1894, submitted to the tribe, through its principal chief, written propositions upon which we proposed to negotiate with them, as follows:

PROPOSITIONS TO THE CREEKS.

The commission to the Five Civilized Tribes, appointed by the President under section 16 of an act of Congress approved March 3, 1893, propose to treat with the Creek Nation on the general lines indicated below, to be modified as may be deemed wise by both parties after discussion and conference.

First. To divide all lands now owned by the Creek Nation, not including town sites, among all citizens, according to the treaties now in force, reserving town sites, coal, and minerals for sale under special agreement. Sufficient land for a good home for each citizen to be made inalienable for twenty-five years, or such longer period as may be agreed upon.

Second. The United States to agree to put each allottee in possession of the land allotted to him, without expense to the allottee, that is, to remove from the allottee's land all persons who have not written authority to be on the same, executed by the allottee after the date of the evidence of title.

Third. Town sites, coal, and mineral discovered before allotment to be the subject of special agreement between the parties, such as will insure to the nation and to those who have invested in them just protection and adjustment of the respective rights and interests therein.

Fourth. A final settlement of all claims against the United States.

Fifth. All invested funds not devoted to school purposes, and all moneys derived from the sale of town sites, coal, and minerals, as well as all moneys found due from the United States, to be divided per capita among the citizens, according to their respective rights under treaties and agreements.

Sixth. All moneys due the citizens of said Nation, except that devoted to school purposes, to be paid per capita to the citizens entitled thereto by an officer of the United States, to be appointed by the President.

Seventh. A board of three persons to be agreed upon, to whom shall be referred all questions of citizenship and right to allotment, to consist of one member of this commission and one Creek by blood, they to select the third member, wholly disinterested; and in case they shall fail to agree upon such third member, such third member shall be appointed by the President.

Eighth. If an agreement shall be reached with the Creek Nation, a Territorial form of government may be formed by Congress and established over the territory of the Creek Nation, and such other of the Five Civilized Tribes as may have at the time agreed to allotment of lands and change of government.

Ninth. Such agreement, when made, shall be submitted for ratification to the Creek government, and if ratified by it, shall then be submitted to Congress for approval.

Tenth. The present tribal government to continue in existence until after the lands are allotted and the allottees put in possession—each of his own land—after which a Territorial government may be established by Congress.

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

These propositions were accompanied by the following letter of transmittal:

SOUTH MCALESTER, *July 25, 1894.*

DEAR SIR: The commission appointed by the President under the sixteenth section of an act of Congress approved March 3, 1893, has not heretofore submitted to the Creek government formal propositions looking to concluding an agreement as provided in such section. We, therefore, herewith inclose such propositions, and request that a commission be constituted by the Creek government, with full power to settle upon the terms of such agreement.

We also request a definite answer prior to 1st of October next, as at that time it is the purpose of this commission to report to the Secretary of the Interior the influences which prevent such an agreement should your government further decline to enter upon negotiations with this commission, as also all other matters which should properly be embraced in such report.

We are, very respectfully,

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

Hon. LEGUS C. PERRYMAN,
Principal Chief, Creek Nation.

The national council of the Creek Nation convened in regular session in October, 1894, and adjourned without having taken any action upon the foregoing propositions, so far as this commission has been advised.

CHOCTAW NATION.

By agreement this commission met and addressed the council of the Choctaw tribe at the capitol, Tushkahoma, on the 25th day of January, 1894, explaining the objects of the commission, and the desires and purposes of the U. S. Government in sending it to the Territory. After the international council above alluded to, a commission of Choctaws waited upon us at Muskogee and requested that members of the commission visit and address the Choctaw people at a number of points in the Choctaw tribe; which we did during the spring and summer, accompanied by a commission of three, appointed by the Choctaw council, who could speak both the English and Choctaw languages, and who were instructed to use their influence to prevent favorable consideration of the propositions submitted by this commission.

On the 23d day of April, 1894, we submitted propositions to the Choctaw tribe as follows:

PROPOSITIONS TO THE CHOCTAW AND CHICKASAW NATIONS.

We propose to treat with the Choctaw and Chickasaw nations jointly, on these general lines, to be modified as may be deemed wise by both parties, after discussion and conference.

First. To divide all lands now owned by the Choctaws and Chickasaws, not including town sites, among all citizens of the two nations, according to the treaties now in force, reserving the coal, minerals, and town sites for sale.

Second. The United States to agree to put each allottee in possession of the land allotted to him without expense to the allottee.

Third. Town sites, coal and minerals discovered to be the subject of special agreements between the parties, and such as will secure to the nation and to those who have invested in them a just protection and adjustment of their respective rights therein.

Fourth. A settlement of all claims against the United States, including the "leased district."

Fifth. All invested funds and all moneys derived from the sale of town sites, coal and minerals, and from the sale of the leased district, as well as all moneys found to be due from the United States to either of said nations, to be divided per capita among their citizens according to their respective rights under the treaties and agreements.

Sixth. All the moneys due the citizens of said nations, except that devoted to school purposes, to be paid per capita to the citizens of each nation respectively by an officer of the United States, who shall be appointed by the President.

Seventh. If an agreement shall be reached with the Choctaws and Chickasaws, a territorial government shall be formed by Congress over the territory of the two nations, and such other of the Five Civilized Tribes as may have at the time allotted their lands and agreed to a change of government.

Eighth. The present tribal governments to continue until after the lands are allotted and the allottee put in possession, each, of his own land and the money paid to those entitled to the same.

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

These propositions were accompanied by a letter of transmittal similar to the one to the Creeks above copied.

Since these propositions were submitted the Choctaw council met in regular session in October last, and adjourned without having taken any action thereon, so far as this commission is advised.

CHICKASAW NATION.

In answer to our letter announcing our presence in the Territory, heretofore alluded to, Hon. Jonas Wolfe, governor of the Chickasaw Nation, suggested the 6th day of February, 1894, at Tishomingo, as the time and place for a meeting of this commission with a commission appointed by him. At that time and place we met and addressed the commission so appointed, together with a large number of Chickasaw Indians, on the objects and purposes for which this commission was appointed, and by request of the governor and members of said commission we met the citizens of the Chickasaw tribe at a number of places and addressed large audiences on the subject of our mission during the spring and summer.

On the 23d day of April, 1894, we submitted propositions to the Chickasaw tribe, through its governor, like those submitted to the Choctaw Nation and copied above, which were accompanied by a like letter of transmittal.

Since these propositions were submitted the national council of the Chickasaw Nation met in regular session and adjourned without having taken any action on such propositions, so far as we are advised.

CHEROKEE NATION.

On the 30th day of January, 1894, a commission of Cherokees met us at Muskogee, they having been appointed by the principal chief, in response to our letter heretofore referred to. They presented to us a copy of the resolutions adopted by their tribal council, under which they were appointed, which expressly forbade them from entering upon negotiations with this commission, looking to allotment of lands or change of government, and in effect instructing them to use all means within their power to prevent the accomplishment of our mission. After a conference with us, however, they invited us to make a number of appointments and to meet and address the citizens of the Cherokee tribe on the subject of our mission. This we accordingly did during the ensuing spring and summer.

On the 25th day of July, 1894, we submitted to the Cherokee tribe, through its principal chief, propositions as follows:

PROPOSITION TO THE CHEROKEES.

The Commission to the Five Civilized Tribes, appointed by the President under section 16 of an act of Congress approved March 3, 1893, propose to treat with the Cherokee Nation on the general lines indicated below, to be modified and extended as may be deemed wise by both parties after discussion and conference.

First. To divide all lands now owned by the Cherokee Nation, not including town sites, among all citizens according to treaties now in force, reserving town sites and minerals for sale under special agreements. Sufficient land for a good home for each citizen to be made inalienable for twenty-five years, or such longer period as may be agreed upon.

Second. The United States to agree to put each allottee in possession of the land allotted to him without expense to allottee—that is, to remove from the allottee's land all persons who have not written authority from the allottee to be on the same, executed after the date of the evidence of title.

Third. Town sites, coal and minerals discovered before allotment to be the subject *of special* agreement between the parties, such as will secure to the nation and to

those who have invested in them a just protection and adjustment of their respective rights and interests therein.

Fourth. A final settlement of all claims against the United States.

Fifth. All invested funds not devoted to school purposes and all moneys derived from the sale of town sites, coal and mineral, as well as all moneys found due from the United States, to be divided per capita among citizens according to their respective rights under the treaties and argeements.

Sixth. All moneys due the citizens of said nation, except that devoted to school purposes, to be paid per capita to the citizens entitled thereto by an officer of the United States, to be appointed by the President.

Seventh. A board of three persons to be agreed upon, to whom shall be referred all questions of citizenship and right to allotment, except freedmen, to consist of one member of this commission and one Cherokee by blood, they to select the third member, who shall be wholly disinterested; and in case they shall fail to agree upon such third member, he shall be appointed by the President.

Eighth. A board of three persons to be agreed upon, to consist of two members of this commission and one Cherokee by blood, who shall revise the roll of freedmen, known as the Wallace roll, and erase the names of such as may be improperly placed on said rolls and add such as may be entitled thereto, including such as may have been born since that roll was made.

Ninth. If an agreement shall be reached with the Cherokee Nation, a Territorial government may be formed by Congress and established over the Cherokee Nation and such other of the Five Civilized Tribes as may have, at the time, agreed to allotment of lands and change of government.

Tenth. Such agreement, when made, shall be submitted for ratification to the Cherokee government, and if ratified by it shall then be submitted to Congress for approval.

Eleventh. The present tribal government to continue in existence until after the lands are allotted and the allottee put in possession of his own land, after which a Territorial government may be established by Congress.

Twelfth. The agreement entered into by the United States, in reference to intruders, is to be in no way impaired, but is to continue in force and be carried out as originally made, if desired by the Cherokee Nation.

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

These propositions were accompanied by the following letter of transmittal:

SOUTH MCALESTER, IND. T., *July 25, 1894.*

DEAR SIR: The commission appointed by you last January, upon an interview with this commission, under instructions from the Cherokee council, declined to take any steps looking to a change of land tenure and the organization of a territorial government by the United States. Believing the Cherokee people did not fully comprehend the changes proposed, and the willingness and anxiety of the United States Government to throw around them protection against any possible injury resulting from such proposed change, it was deemed advisable by this commission to disseminate among them such information as would enable them to fully understand the same, with the necessity therefor, and the reasons why the same was desired by our Government. This was promptly done, and a sufficient time has now elapsed for them to reach a deliberate conclusion.

We therefore have the honor to submit for the consideration of your government propositions outlining the prominent features of an agreement desired by the United States Government, and to request that the same be submitted to your legislative council, and that a commission on the part of the Cherokee Nation be appointed to negotiate with this commission under the provisions of the sixteenth section of an act of Congress approved March 3, 1893.

We shall be pleased to learn of the action of your government prior to the 1st day of October, 1894, at which time it will be the duty of this commission, if negotiations have not been previously entered upon, to report to the Secretary of the Interior the condition of the Cherokee people, the system of land holding now prevalent, and the influence now obstructing the policy of the Government in securing a change of both land tenure and government, and such other matters as should be embraced in said report.

We have the honor to be, governor, yours, with great respect,

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

Hon. C. J. HARRIS,
Principal Chief, Cherokee Nation.

After these propositions were submitted, it came to our knowledge that the honorable Secretary of the Interior had decided that the Cherokee tribe was the exclusive judge as to who were citizens of said tribe, and we accordingly waived the appointment of a board as provided for in the seventh proposition, and notified the principal chief of the Cherokee tribe of such decision and waiver.

After said propositions were submitted to the Cherokee tribe, Chief Harris requested that the time for an answer thereto be extended until a meeting of the Cherokee council on the first Monday in November, 1894, which we agreed to. The Cherokee council is now in session, but up to this date no reponse has been received.

SEMINOLE NATION.

In answer to our letter to the governor of the Seminole tribe, he suggested that the national council of the Seminole tribe would convene early in April and named the 6th day of April, 1894, as the time and Wewoka as the place he desired this commission to meet and address said council. Pursuant to such suggestion we met and addressed the council and a large number of citizens of said tribe. Afterwards the council met and adopted resolutions declining to take any action whatever with a view of negotiating with this commission. Not having done so before, we, on the 26th day of July, 1894, in order to make our propositions more specific and definite, and to obtain a clear response thereto, submitted to the Seminole tribe the following propositions:

PROPOSITIONS TO THE SEMINOLES.

The commission to the Five Civilized Tribes, appointed by the President unde section 16 of an act of Congress, approved March 3, 1893, propose to treat with the Seminole Nation on the general lines indicated below, to be modified as may be deemed wise by both parties after discussion and conference.

First. To divide all lands now owned by the Seminole Nation, not including town sites, among all cititens according to the treaties now in force, reserving town sites, coal and minerals, for sale under special agreement. Sufficient land for a good home for each citizen to be inalienable for twenty-five years, or such longer period as may be agreed upon.

Second. The United States to agree to put each allottee in possession of the lands allotted to him without expense to the allottee—that is, to remove from the allottee's land all persons who have not written authority to be on the same, executed by the allottee after the date of the evidence of title.

Third. Town sites, and coal and minerals discovered before allotment, to be the subjects of special agreements between the parties—such as will secure to the nation and to those who have invested in them a just protection and adjustment of the respective rights and interests therein.

Fourth. A final settlement of all claims against the United States.

Fifth. All invested funds, not devoted to school purposes, and all moneys derived from the sale of town sites, coal and minerals, as well as all moneys found due from the United States, to be divided per capita among the citizens according to their respective rights under the treaties and agreements.

Sixth. All moneys due the citizens of said nation, except that devoted to school purposes, to be paid per capita to the citizens entitled thereto by an officer of the United States, to be appointed by the President.

Seventh. If an agreement shall be reached with the Seminole Nation a Territorial government may be formed by Congress and established over the territory of the Seminole Nation and such other of the Five Civilized Tribes as may have at the time agreed to allotment of lands and change of government.

Eighth. Such agreements when made shall be submitted for ratification to the Seminole government, and, if ratified by it, shall then be submitted to Congress for approval.

Ninth. The present tribal government to continue in existence until after the lands are allotted and the allottee put in possession, each of his own land, after which a territorial government may be established by Congress.

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

The foregoing propositions were accompanied by the following letter of transmittal:

SOUTH MCALESTER, IND. T., *July 28, 1894.*

DEAR SIR: Please find inclosed formal propositions indicating the general line upon which this Commission proposes to negotiate with the Seminole Nation.

We request that your nation appoint a commission to arrange the details of such *an agreement* as this commission is authorized to make under the sixteenth section *of an act of Congress* approved March 3, 1893.

We hope to be informed in regard to the action of your nation prior to the 1st of October next. If your nation should decline to appoint a commission as requested, we desire at that time to submit a report to the Secretary of the Interior of the condition of the Seminole people and the causes and influences obstructing the policy of the U. S. Government in regard to a change of land tenure and government, with such other facts as may seem pertinent and will enable the Government to take such further action as it may deem wise.

Information, alike accessible to all, must convince you of the earnest desire of the United States to effect a change in the condition of the Five Civilized Tribes, and of the many advantages which would accrue to your people if they shall effect such change by agreement.

We have the honor to be, respectfully, yours,

HENRY L. DAWES,
MEREDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

Hon. JOHN F. BROWN,
Principal Chief, Seminole Nation, Wewoka, Ind. T.

To the above propositions we have not, as yet, received any reply.

SOME EXPLANATIONS.

Early interviews with us by commissioners appointed by the several tribes, and with citizens, satisfied us that the Indians would not, under any circumstances, agree to cede any portion of their lands to the Government, but would insist that if any agreements were made for allotment of their lands it should all be divided equally among them. Among other reasons assigned, it was stated that a cession to the United States would likely make operative and effective the various railroad grants; that they preferred each to sell his share of the lands and receive the money for it, as if ever their lands were converted into money it would go into the hands of the officers of the tribes, who would swindle them out of a large portion of it. Finding this unanimity among the people against the cession of any of their lands to the United States, we abandoned all idea of purchasing any of it and determined to offer them an equal division of all their lands. Hence the first proposition made to each tribe.

An objection very generally urged to allotment of lands was that they would be in possession, when allotted, of noncitizens, whom they could not dispossess without interminable lawsuits, and as the Indians, especially the full-bloods, have a settled aversion to go into our courts, we, to remove this difficulty, submitted the second proposition to each tribe.

There are towns in the Territory ranging in population from a few people to 5,000 inhabitants. Nearly all of them are noncitizens. These towns have not been surveyed or platted, and streets exist only by agreement and arrangement among the people who have constructed them, and are often bent and irregular. Many large and valuable stone, brick, and wooden buildings have been erected by noncitizens of these towns, and the lots on which they stand are worth many thousands of dollars. These town sites are not susceptible of division among the Indians, and the only practicable method of adjusting the equities between the tribes who own the sites and those who have constructed the buildings is to appraise the lots without the improvements and the improvements without the lots, and allow the owners of the improvements to purchase the lots at the appraised value, or to sell lot and improvements and divide the money according to the appraisement. Hence, the third proposition to all the tribes, town sites were reserved for disposition under special agreements.

Complaints are made by the Cherokees that many freedmen are on the rolls made under the direction of the Government, and known as the "Wallace Roll," who are not entitled to be there, and many freedmen complain that they have been improperly omitted. The chief of the Cherokee tribe suggested that they might be willing to submit all these disputes to this commission for decision, but it was believed that if an intelligent Cherokee by blood was one of such board, it would give the Cherokee people a knowledge of the good faith and correctness of the decision, and secure their confidence in the conclusions arrived at. Hence, in the eighth proposition to the Cherokees, we propose such board be composed of two members of this commission and one Cherokee by blood.

The Cherokee tribe is clamorous for the execution of the agreement in regard to intruders contained in the contract heretofore made with that tribe in purchasing the "Outlet," and we have been met by the declaration repeatedly made by those in power, that when that agreement was carried out it would be time to discuss the propriety of making another. We therefore provided that that agreement should

not in any way be impaired, though it is believed the proposition numbered second is certainly the most satisfactory and effective method of settling the intruder question that has been suggested.

Our instructions were to endeavor to secure the sixteenth and thirty-second sections for school purposes. This was strenuously objected to on the ground, as was claimed, that it would be requiring them to furnish a large school fund for a people of whom they did not constitute more than one-seventh. It was therefore omitted in the propositions made to all the tribes.

The Choctaws and Chickasaws are still claiming an interest in the south part of what is known as the "Leased district," and they insisted that if negotiations were entered upon this matter should also be adjusted before the abolition of their tribal governments, and we embraced it in the fourth proposition to them that the matter might properly come before the tribe and the Government when negotiations were concluded.

In addition to these official communications, and in order that their purport might reach as many individual Indians of the several tribes as possible and their importance be fully understood, we have held frequent conferences with the citizens themselves and personally with those in authority at their respective capitols, at our own headquarters, and whenever an opportunity presented itself. We addressed frequent meetings of the Indians also for that purpose in different parts of the Territory, and have visited all parts of it to acquaint ourselves with the condition of the people and with their views upon the subject-matter of our mission. We have also presented the subject through the public press of the Territory whenever possible, and have caused our addresses, circulars, and propositions to be translated into the languages of the different tribes and circulated among those who do not understand the English language. A copy of our address to the citizens of the Five Tribes, issued soon after our arrival in the Territory, is herewith submitted.

The east half of the Territory, inhabited by the Five Civilized Tribes, is mostly covered with dwarf oak, and a belt of similar timber extends west to Oklahoma through the north part of the Chickasaw and south part of the Creek countries, and covers most of the Seminole country. In the Chickasaw, Choctaw, and Seminole countries are mountains of considerable extent covered with pine forests. The margins of streams are bordered with heavy timber, in which are jungle and vines, constituting impenetrable thickets. The remainder of the country is prairie of rich alluvial soil and admirably adapted to agricultural purposes. The land covered with oak timber is generally poor, rocky, and mostly worthless for cultivation.

Coal of superior quality abounds in the Territory, and in the Choctaw country especially are immense beds, worth many millions of dollars, which are being extensively worked by large and costly plants. These coal beds are shingled over with leases and discoverers' rights, claimed under existing law, and complications are arising which will lead to conflict and endless litigation, and which are constantly growing worse.

The abundance of game, fine spring water, and convenience of wood led the Indians to settle in the timber country when first transferred to the Territory, and where the full-bloods still remain, eking out an existence on a few acres of corn raised in the small valleys, and the hogs raised on the acorns.

The real Indian is living in this sterile country, far from the whites and from all civilizing influences.

The mountains and thickets along the water courses afford a refuge and abiding place for criminals and outlaws, whence they sally in their forays on the surrounding country and States, and to which they return when pursued. The immunity thus afforded from arrest and punishment, encourages lawlessness and only the presence of large bodies of armed men or the settlement of the country can extirpate this evil.

Indians living in the woods are by the admission of their wisest men less civilized and fit for citizenship than they were twenty years ago. Theirs is a case of arrested progress, and it is believed that the only hope of civilizing them is to induce them to settle on the fertile lands, rent portions to the whites, mingle freely with them, attending the same churches and schools.

The barrier opposed at all times by those in authority in the tribes, and assuming to speak for them as to any change in existing conditions, is what they claim to be "the treaty situation." They mean by this term that the United States is under treaty obligations not to interfere in their internal policy, but has guaranteed to them self-government and absolute exclusion of white citizens from any abode among them; that the United States is bound to isolate them absolutely. It can not be doubted that this was substantially the original governing idea in establishing the Five Tribes in the Indian Territory, more or less clearly expressed in the treaties, which are the basis of whatever title and authority they at present have in the possession of that Territory, over which they now claim this exclusive jurisdiction. To that end the United States, in different treaties and patents executed in

pursuance of such treaties, conveyed to the several tribes the country originally known as the "Indian Territory," of which their present possessions are a part only, and agreed to the establishment by them therein of governments of their own. The United States also agreed to exclude all white persons from their borders.

These treaties, however, embraced stipulations equally clear, that these tribes were to hold this territory for the use and enjoyment of all Indians belonging to their respective tribes, so that every Indian, as is expressed in some of the treaties, "shall have an equal right with every other Indian in each and every portion of the territory," and the further stipulation that their laws should not conflict with the Constitution of the United States. These were executory provisions to be observed in the future by both sides. Without regard to any observance of them on their part, the Indians claim that these treaties are irrevocably binding on the United States. These stipulations naturally grew out of the situation of the country at the time they were made, and of the character of the Indians with whom they were made. The present growth of the country and its present relations to this territory were not thought of or even dreamed of by either party when they entered into these stipulations. These Indians were then at a considerably advanced stage of civilization, and were thought capable of self-government, in conformity with the spirit if not the forms of the National Government, within whose limits they were to remain. It was not altogether unreasonable, therefore, to conclude that it would be possible, as it was by them desirable, that these Indians could have set apart to them a tract of country so far remote from white civilization and so isolated that they could work out the problem of their own preservation under a government of their own, and that not only with safety to the Union but with altogether desirable results to themselves.

For quite a number of years after the institution of this project it seemed successful, and the Indians under it made favorable advance toward its realization. But within the last few years all the conditions under which it was inaugurated have undergone so complete a change that it has become no longer possible. It is hardly necessary to call attention to the contrast between the present conditions surrounding this Territory and those under which it was set apart. Large and populous States of the Union are now on all sides of it, and one-half of it has been constituted a Territory of the United States. These States and this Territory are teeming with population and increasing in numbers at a marvelous rate. The resources of the Territory itself have been developed to such a degree and are of such immense and tempting value that they are attracting to it an irresistible pressure from enterprising citizens. The executory conditions contained in the treaties have become impossible of execution. It is no longer possible for the United States to keep its citizens out of the Territory. Nor is it now possible for the Indians to secure to each individual Indian his full enjoyment in common with other Indians of the common property of the Territory.

The impossibility of enforcing these executory provisions has arisen from a neglect on both sides to enforce them. This neglect is largely the result of outside considerations for which neither is responsible and of the influence of forces which neither can control. These executory conditions are not only impossible of execution, but have ceased to be applicable or desirable. It has been demonstrated that isolation is an impossibility, and that, if possible, it could never result in the elevation or civilization of the Indian. It has been made clear that under its operations, imperfectly as it has been carried out, its effect has been to retard rather than to promote civilization, to impair rather than strengthen the observance of law and order and regard for human life and human rights or the protection or promotion of a virtuous life. To such a degree has this sad deterioration become evident that to-day a most deplorable and dangerous condition of affairs exist in the Territory, causing widespread alarm and demanding most serious consideration.

All the functions of the so-called governments of these five tribes have become powerless to protect the life or property rights of the citizen. The courts of justice have become helpless and paralized. Violence, robbery, and murder are almost of daily occurrence, and no effective measures of restraint or punishment are put forth to suppress crime. Railroad trains are stopped and their passengers robbed within a few miles of populous towns and the plunder carried off with impunity in the very presence of those in authority. A reign of terror exists, and barbarous outrages, almost impossible of belief, are enacted, and the perpetrators hardly find it necessary to shun daily intercourse with their victims. We are now informed that, within the territory of one of these tribes, there were 53 murders during the month of September and the first twenty-four days of October last, and not a single person brought to trial.

In every respect the present condition of affairs demonstrates that the permission to govern themselves, under the Constitution of the United States, which was originally embraced in the treaty, has proved a failure. So, likewise, has the provision that requires the United States to exclude white citizens from the Territory The

course of procedure by the governments of the Five Tribes has largely contributed to this result, and they are quite as much responsible as the United States for the fact that there are 250,000 white people residing in the Territory. These citizens of the United States have been induced to go there in various ways and by various methods by the Indian governments themselves. These governments consented to the construction of a number of railways through the Territory, and thereby consented that they bring into the Territory all that is necessary in the building and operation of such railroads—the necessary depots, stations, and the inevitable towns which their traffic was sure to build up, and the large building which white men alone could develop and which these railroads were sure to stimulate and make profitable.

Besides these, they have, by their laws, invited men from the border States to become their employés in the Territory, receiving into their treasuries a monthly tax for the privilege of such employment. They have also provided by law for the intermarriage of white persons with their citizens and adopted them into their tribes. By operation of these laws large numbers of white people have become adopted citizens, participating in the benefits of citizenship. A single instance of such marriage has enabled one white man under the laws to appropriate to his exclusive use 50,000 acres of valuable land. They have, by their legislation, induced citizens of the United States to come in from all sides and under leases and other agreements with private citizens, sanctioned by their own laws, farmed out to them large ranges of their domain, as well as inexhaustible coal deposits within their respective borders, and other material interests which civilized white men alone could turn to profit. In some sections of the Territory the production of cotton has proved so feasible and profitable that white men have been permitted to come in by thousands and cultivate it and build trading marts and populous towns for the successful operation of this branch of trade alone.

In a single town of 5,000 white inhabitants, built there by their permission and also for the profit of the Indian, there were during last year marketed 40,000 bales of cotton. They have also sold off to the United States one-half of their original territory, to be opened up to white settlement on their western borders, in which, with their consent thus obtained, 300,000 white citizens have made their homes, and a Territorial government by this means has been erected in the midst of their own territory, which is forbidden by one of the executory provisions of the treaty. The day of isolation has passed. Not less regardless have they been of the stipulations in their title that they should hold their territory for the common and equal use of all their citizens. Corruption of the grossest kind, openly and unblushingly practiced, has found its way into every branch of the service of the tribal governments. All branches of the governments are reeking with it, and so common has it become that no attempt at concealment is thought necessary. The governments have fallen into the hands of a few able and energetic Indian citizens, nearly all mixed blood and adopted whites, who have so administered their affairs and have enacted such laws that they are enabled to appropriate to their own exclusive use almost the entire property of the Territory of any kind that can be rendered profitable and available.

In one of these tribes, whose whole territory consists of but 3,040,000 acres of land, within the last few years laws have been enacted under the operation of which 61 citizens have appropriated to themselves and are now holding for pasturage and cultivation 1,237,000 acres. This comprises the arable and greater part of the valuable grazing lands belonging to that tribe. The remainder of that people, largely the full-bloods who do not speak the English language, are excluded from the enjoyment of any portion of this land, and many of them occupy the poor and hilly country where they get a scanty living from such portions as they are able to turn to any account. This class of persons in the Territory are making little if any progress in civilization. They are largely dependent on those in control of public affairs, whose will they register at the polls and with whose bidding, in a large measure, they comply without question. Those holding power by these means oppose any change and ask only to be let alone.

In another of these tribes, under similar legislation, vast and rich deposits of coal of incalculable value have been appropriated by the few, to the exclusion of the rest of the tribe and to the great profit of those who operate them and appropriate their products to their individual use. Large and valuable plants for mining coal have been established by capitalists under leases by which, together with "discoverer's claims" authorized by the tribal governments, these coal lands are covered, and under the workings of which the rightful owners are being despoiled of this valuable property with very little or no profit to them; and it is clear that this property should be restored to the common domain and protected to the common people, and the mines worked under a system just and equitable to all who have rights therein.

The vast pine forests heretofore spoken of, which are of incalculable value, if not *indispensable*, in the future development of the country and the building up of *homes and improvements* of the agricultural lands, are being spoliated and laid

waste by attempts, under laws enacted for that purpose, to grant to a few, mostly adopted white citizens, the right to cut and market for their own use whatever timber they can turn to their own profit. This is an irreparable destruction of one of the most essential elements of the progress of the country in the future and should be at once arrested.

Towns of considerable importance have been built by white persons under leases obtained from Indians claiming the right to appropriate the common property to these uses. Permanent improvements of great value have thus been made by white citizens of the United States, induced and encouraged thereto by the tribal governments themselves, and have become immovable fixtures which can not be taken away. However difficult the problem of adjusting rights thus involved, nothing can be more clear than that the step can not be retraced. Towns built under such inducements can not be removed nor their structures razed to the ground, nor can the places they occupy be restored to the conditions originally contemplated by the treaties. Ruinous as any such attempt would be to those thus induced to expend their money in building these towns, it would not be less ruinous to the Indians themselves to be, by any such attempt, forced back to the methods of life existing before the coming of these white men. The original idea of a community of property has been entirely lost sight of and disregarded in every branch of the administration of their affairs by the governments which have been permitted to control this Territory under the treaty stipulations which are now being invoked, by those who are in this manner administering them, as a protection for their personal holdings and enterprises.

The large payments of moneys to the Indians of these tribes within the last few years have been attended by many and apparently well-authenticated complaints of fraud, and those making such payments, with others associated with them in the business, have, by unfair means and improper use of the advantages thus afforded them, acquired large fortunes, and in many instances private persons entitled to payments have received but little benefit therefrom. And worse still is the fact that the places of payments were thronged with evil characters of every possible caste, by whom the people were swindled, defrauded, robbed, and grossly debauched and demoralized. And in case of further payments of money to them the Government should make such disbursements to the people directly, through one of its own officers.

We feel it our duty to here suggest that any measures looking to any change of affairs in this Territory should embrace special, strict, and effective provisions for protection of the Indian and other citizens from the introduction, manufacture, or sale of intoxicants of any kind in the Territory, with penalties therefor and for failure by officers to enforce same, sufficiently severe to cause their perfect execution. A failure to thus protect these Indians will, in a measure, work their extinction at no distant day.

It is a deplorable fact, which should not be overlooked by the Government, that there are thousands of white children in this territory who are almost wholly without the means of education, and are consequently growing up with no fitting preparation for useful citizenship. A matter of so much concern to the country should not be disregarded.

When the treaties were reaffirmed in 1866, provision was made for the adoption and equality of rights of the freedmen, who had theretofore been slaves in the tribes, upon terms provided in the treaties. The Cherokees and Choctaws have appeared to comply with the letter of the prescribed terms, although very inadequately and tardily, and the Chickasaws at one time took some steps toward complying with these terms, but now deny that they ever adopted the freedmen, and are endeavoring to retrace the steps originally taken. They now treat the whole class as aliens without any legal right to abide among them, or to claim any protection under their laws. They are shut out of the schools of the tribe, and from their courts, and are granted no privileges of occupancy of any part of the land for a home, and are helplessly exposed to the hostilities of the citizen Indian and the personal animosity of the former master. Peaceable, law-abiding, and hard-working, they have sought in vain to be regarded as a part of the people to whose wealth their industry is daily contributing a very essential portion. They number in that tribe about 4,000, while the Chickasaws number 3,500. The United States is bound by solemn treaty to place these freedmen securely in the enjoyment of their rights as Chickasaw Indians, and can not with honor ignore the obligation.

Upon this subject, as also the claims and condition of the Choctaw freedmen, referred to us by the Department, we submit with this report briefs prepared and submitted to us by Hon. R. V. Belt, and Hon. J. P. Mullen, counsel for the Choctaw and Chickasaw freedmen.

The condition of the freedmen in the Choctaw and Cherokee tribes is little better than that of those among the Chickasaws, although they have been adopted according to the requirements of the treaties. They are yet very far from the enjoyment of all the rights, privileges, and *immunities* to which they are entitled under the

treaties. In the Choctaw tribe, the 40 acres to which they are entitled for a home has not been set apart to them and no one has any title to a single foot of land he may improve or occupy. Whenever his occupancy of land is in the way of any citizen Indian he is at once, by means sufficiently severe and threatening, compelled to leave his improvements. He consequently has no abiding place, and what he is enabled to get from the soil for his support, he is compelled to gather either furtively or by the most absolute subserviency to the will, caprices, or exactions of his former master. But meager provision is made for the schooling of his children, and but little participation in the management of the government of which he is a citizen is permitted him. He is nevertheless moral, industrious, and frugal, peaceable, orderly, and obedient to the laws, taking no part in the crimes which have of late filled the country with alarm and put in peril the lives and property of law-abiding citizens. A number of these sought an interview with us on one occasion, but were, as we were informed, warned by a prominent Indian citizen that if they called upon us they would be killed, which warning they heeded.

In the Cherokee tribe the schools provided for the freedmen are of very inferior and inefficient character, and practically their children are growing up in deplorable ignorance. They are excluded from participation in the per capita distribution of all funds, and are ignored in almost all respects as a factor in the government of a people of whose citizenship they are by the treaties in all respects made a part. Yet in this tribe the freedmen are conspicuous for their morality, industrial and frugal habits, and for peaceable and orderly lives.

Justice has been utterly perverted in the hands of those who have thus laid hold of the forms of its administration in this Territory and who have inflicted irreparable wrongs and outrages upon a helpless people for their own gain. The United States put the title to a domain of countless wealth and unmeasured resources in these several tribes or nationalities, but it was a conveyance in trust for specific uses, clearly indicated in the treaties themselves, and for no other purpose. It was for the use and enjoyment in common by each and every citizen of his tribe, of each and every part of the Territory, thus tersely expressed in one of the treaties: "To be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole." The tribes can make no other use of it. They have no power to grant it to anyone, or to grant to anyone an exclusive use of any portion of it. These tribal governments have wholly perverted their high trusts, and it is the plain duty of the United States to enforce the trust it has so created and recover for its original uses the domain and all the gains derived from the perversions of the trust or discharge the trustee.

The United States also granted to these tribes the power of self-government, not to conflict with the Constitution. They have demonstrated their incapacity to so govern themselves, and no higher duty can rest upon the Government that granted this authority than to revoke it when it has so lamentably failed.

In closing this report we may be permitted to add that we have observed with pain and deep regret that the praiseworthy efforts of the Christian church, and of benevolent associations from different parts of the country, so long continued among the tribes, are being counteracted and rendered in a large measure nugatory by the untoward influences and methods now in force among them tending directly to destroy and obliterate the beneficial effects of their good work.

Respectfully submitted.

HENRY L. DAWES,
MERIDITH H. KIDD,
ARCHIBALD S. MCKENNON,
Commissioners.

Hon. HOKE SMITH,
Secretary of the Interior, Washington, D. C.

STATEMENT OF THE CHOCTAW FREEDMEN,

SETTING FORTH

THEIR WRONGS, GRIEVANCES, CLAIMS, AND WANTS.

AUGUST, 1894.

Submitted to HON. HENRY L. DAWES, Chairman,
HON. MEREDITH H. KIDD,
HON. ARCHIBALD S. McKENNON,
Commission to the Five Civilized Tribes, Muscogee, Indian Territory.

By E. D. COLBERT,
D. BARROWS,
WESLEY McKENNEY,
Committee of the Choctaw Colored Citizens' Association.

HON. R. V. BELT, Washington, D. C.,
HON. J. P. MULLEN, Fort Smith, Ark.,
Attorneys and Counsel for Association.

INDIAN TERRITORY, *August —, 1894.*

Hon. HENRY L. DAWES, *Chairman,*
Hon. MEREDITH E. KIDD,
Hon. ARCHIBALD S. MCKENNON,
Commission to The Five Civilized Tribes, Muscogee, Indian Territory.

GENTLEMEN: For the purpose of considering the business, claims, and grievances of those persons who were formerly held in slavery by the Choctaw Indians, and their descendants, including those persons who have intermarried with Choctaw freedwomen, and those Choctaw Indian women by blood who have intermarried with persons of African descent, and all other persons of African and Choctaw blood and descent, residing in the Choctaw Nation, an association has heretofore been formed, whose membership is composed of the classes of persons enumerated, and is known by the name of the Choctaw Colored Citizens' Association.

REFERRED TO THE DAWES COMMISSION.

In response to a letter addressed to him on the subject, the honorable Secretary of the Interior has advised us to lay our grievances, condition, claims, etc., before the Commission appointed by the President to negotiate with the Five Civilized Tribes in the Indian Territory.

PROCEEDINGS OF THE CHOCTAW COLORED CITIZENS' CONVENTION.

In order that we might comply with this suggestion, a call was made, of which due and timely notice was given, for the members of the Choctaw Colored Citizens' Association to meet in convention at Goodland, Kiamichi County, Choctaw Nation, on the 1st day of February, 1894. At the time and place indicated, the convention was duly and regularly assembled and the proceedings thereof are contained in the accompanying printed pamphlet, embracing a "Memorial of the Choctaw Colored Citizens' Association," wherein is set out very briefly and very generally the wrongs and injustice suffered by the classes of persons comprising the association (who, for convenience, will hereafter be referred to in this paper as the "Choctaw freedmen") by reason of the failure of the Choctaw Nation and the United States to fulfill the treaty relations concerning and affecting the Choctaw freedmen.

It will be seen by reference to the printed pamphlet of the proceedings of the convention (copy herewith, Exhibit 1), that the undersigned were appointed a committee to call upon, confer with, and make known to your Commission the condition, status, grievance, and wants of the Choctaw freedmen.

CONFIDENCE IN THE DAWES COMMISSION.

The Choctaw freedmen consider themselves fortunate indeed in that they have the privilege of laying their claims and grievances before a Commission, now so close at hand, and composed of gentlemen so able, so wise, and so well known for their disposition to do what is fair, right, and just in all matters with which they have to deal. They consider themselves particularly fortunate that they are referred to a Commission whose chairman is a statesman of such exalted national reputation, having such long and thorough familiarity with and experience in the affairs concerning the Indians of this country, and whose wisdom in discerning what is right has contributed so largely to the solution and adjustment of so many difficult problems affecting the relation of the Indian tribes to each other and to the Government of the United States. We therefore feel encouraged that at the hands of your Commission some fair and just plan will be adopted whereby the great wrongs and injustice inflicted upon and suffered so long by the Choctaw freedmen will be righted and adjusted.

UNJUST DISCRIMINATION AGAINST CHOCTAW FREEDMEN AND THE RESPONSIBILITY THEREFOR.

The Choctaw freedmen had no choice in the establishment of the relation of slaves to the Choctaw Indians which previously existed. Their lot, like that of all slaves doomed to unrequited toil and the privations, sufferings, and sorrows of involuntary

bondage and servitude, was a hard one. But when their freedom was secured their great love and attachment for home, kindred, and the associations of their youth induced them rather to remain in the place of their birth, among familiar scenes, customs, and habits, notwithstanding all the surrounding embarrassments, hindrances, etc., than to adventure forth to new fields and occupations amid untried and unfamiliar environments.

The liberation of the Choctaw slaves was a consequence and result of the great war of the rebellion, in which the Choctaw Indians generally threw their aid and influence against the United States. The provision of the treaty of 1866, against slavery thereafter in the Choctaw Nation, was only to give formal acquiescence to what had already been accomplished and already existed.

The Choctaw freedmen claim that when the Choctaw Indians were seeking the reconstruction of their treaty relations with the United States the Choctaw freedmen at that time should have been recognized and treated as Choctaws in all respects, with equal rights with the Choctaw Indians by blood, without regard to their previous condition of servitude.

Upon every principle of justice the recognition of the right of the Choctaw freedmen to a proportionate share in all that belonged to or was claimed by the Choctaw Nation should have been secured to them when the treaty relations between the United States and the Choctaw Indians, broken during the war of the rebellion, were reconstructed.

That such recognition of the equal rights of the Choctaw freedmen in and to the national estate of the Choctaw Indians was not secured in the treaty of 1866 is no fault of the Choctaw freedmen, as they had no voice in the making of that treaty, and they were represented therein only so far as the United States looked after their interests and welfare. That treaty left them without defined rights; unsecured in any privileges, rights, and immunities, with only a stipulation for alternative prospective action for the establishment of their status by either the Choctaw Nation or the United States, as contained in articles 3 and 4 of said treaty, which are as follows:

"ART. III. The Choctaws and the Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98° west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent, in trust for the said nations, until the legislatures of the Choctaw and the Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in said nations at the date of the treaty of Fort Smith and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by, or belonging to, said nations, respectively; and also to give to such persons who were resident as aforesaid, and their descendants, forty acres each of the land of said nations, on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulation, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to, as within ninety days after the passage of such laws, rules, and regulations, shall elect to remove, and shall actually remove, from the said nations, respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations, respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from said territory, in such manner as the United States shall deem proper, the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining, or returning after having been removed from said nations, to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

ART. IV. The said nations further agree that all negroes, not otherwise disqualified or disabled, shall be competent witnesses in all civil and criminal suits and proceedings in the Choctaw and Chickasaw courts, any law to the contrary notwithstanding; and they fully recognize the right of the freedmen to a fair remuneration on reasonable and equitable contracts for their labor, which the law should aid them to *enforce*. And they agree, on the part of their respective nations, that all laws shall be equal in their operation upon Choctaws, Chickasaws, and negroes, and that no dis-

tinction affecting the latter shall at any time be made, and that they shall be treated with kindness and be protected against injury; and they further agree that while the said freedmen now in the Choctaw and Chickasaw nations remain in said nations, respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and their families, in cases where they do not support themselves and families by hiring, not interfering with existing improvements without the consent of the occupant, it being understood that in the event of the making of the laws, rules, and regulations aforesaid, the forty acres aforesaid shall stand in place of the land cultivated as last aforesaid." (14 Stat., 769.)

The delay and failure of both the Choctaw Nation and the United States for so many years in any attempt at fulfillment of the treaty stipulations, wrought irreparable wrongs, untold hardships, and great injustice and suffering to the Choctaw freedmen.

They had no adequate legal security in any kind of property; no place they could call their own; were not encouraged by any sufficient legal protection, they could not build themselves homes, or surround themselves with even the barest means of existence; to say nothing of the comforts and pleasures which come with an advancing civilization. No provision was made by the United States or by the Choctaw Nation for the education of their children, and they, in their poverty, and with no defined rights, privileges, and immunities, could not procure and provide necessary educational facilities; in the absence of which their children grew up in ignorance, to their great harm, wrong, and disadvantage.

The status of the former slaves of the Indian tribes, among which slavery existed, after their liberation as a result of the war of the rebellion, was not in many respects analogous to that of the liberated slaves of the other sections of the country. The latter were made citizens of the United States, and of the States in which they resided, by an amendment to the Constitution. They became thereby owners in common with equal rights and interests, with all other citizens of the United States in all of the common property of the United States, and with the citizens of their respective States of the common property of said States, and became entitled to full and equal enjoyment of all benefits and advantages derived therefrom.

If the land and other property in the States had been held in common by the citizens thereof, instead of in severalty, as was and is the case, the former slaves and newly made citizens would have become entitled to a pro rata share thereof according to their numbers.

As the land, invested funds, annuities, and other moneys belonging to or claimed by the Choctaw Nation, and constituting the estate of said nation were—as they are yet—held in common by the citizens of the Choctaw Nation, the former slaves of the Choctaw Indians, when liberated as a consequence of the war of the rebellion, should have been recognized at once as Choctaws in all respects and entitled to all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nation, and also including the right to share equally with the citizens of said nation in the annuities and other moneys and the public domain belonging to or claimed by said nation. That this claim is right and just is shown by the action taken in the reconstructed treaties of 1866 made with the Creeks, Seminoles, and Cherokees, of the Five Civilized Tribes.

In the treaty of 1866 with the Creeks, this provision is made:

"ART. II. The Creeks hereby covenant and agree, that henceforth neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted in accordance with laws applicable to all members of said tribe, shall ever exist in said nation; and inasmuch as there are among the Creeks many persons of African descent who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus residing in said Creek country, and may return within one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens (thereof) shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give equal protection to all such persons and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe." (14 Stat., 786.)

In the treaty of 1866 with the Seminoles, article 2 is to the same effect. (14 Stat., 756.)

In the Cherokee treaty of 1866 a right to occupy and improve the land, and "all the rights of native Cherokees" are accorded to the Cherokee freedmen and certain other free colored persons, by articles 4, 5, 6, 7, 8, 9, etc. (14 Stat., 800.)

There was no reason why the same principle of justice and right should not have been secured to the Choctaw and Chickasaw freedmen; and with the equality of rights, privileges, and immunities, including the interest in the tribal estate, so fully

acknowledged and recognized in the reconstructed treaties negotiated and concluded with the Creek, Seminole, and Cherokee nations, of the Five Civilized Tribes, to the former slaves of the people of said tribes, it is a cause for great wonder that the United States finally concluded any treaty at that time with the Choctaw and Chickasaw nations which did not fully recognize the equal rights and interests of the former slaves of said tribes in and to the tribal estates.

Who is responsible for this unjust and ruinous discrimination against the Choctaw and Chickasaw freedmen? To whom should they apply but to the United States for the proper measures of relief and reparation?

SUBSEQUENT INEFFECTUAL EFFORTS TO REMEDY ADMITTED TREATY INJUSTICE.

The Choctaw and Chickasaw treaty of 1866 failed to establish and define the status of the freedmen of said tribes. This failure was soon found to have been a serious mistake, the responsibility for which was certainly not with the Choctaw and Chickasaw freedmen.

It has been subsequently sought at various times to secure legislation by Congress to correct this mistake. And the justice of the claim that is here set up in behalf of the Choctaw freedmen, has been heretofore stated with great force and clearness by the honorable Secretary of the Interior (C. Delano) in a report made by him to the Senate Committee on Indian Affairs, on a bill (Stat., 680) for the relief of certain persons of African descent, resident in the Choctaw and Chickasaw nations, which had been objected to by these nations (see Senate Mis. Doc. No. 118, Forty-third Congress, first session). Therein, after referring to the condition of the Choctaw and Chickasaw freedmen, the provisions of the treaty of 1866 as to them, and the failure of fulfillment thereof by both the Choctaw and Chickasaw nations and the United States, the Secretary says:

"Now for the facts. Neither the Choctaw nor the Chickasaw nations have secured to said persons of African descent the rights, privileges, and immunities, including the right of suffrage, provided for in treaty. The United States has not removed any persons of African descent, because such persons are so identified by marriage and customs with said nations as to be unwilling to break up their homes and go elsewhere.

"The $300,000 has not been invested nor paid to the Choctaw and Chickasaw nations; and the said persons of African descent, who are the most industrious and useful portion of the population of each nation, are without the rights, privileges, and immunities of citizens, without the right of suffrage, without land, and without money, and with a disinclination, under all the painful embarrassments, to leave their homes, friends, and relatives, and go elsewhere, for the pitiful sum of $100 per capita. They are as meritorious, to say the least, as the average Choctaw and Chickasaw population. They have probably done as much toward securing the wealth possessed by said nations, per capita, as the average Choctaw and Chickasaw population. Under these circumstances their condition is not simply anomalous; it is unjustifiable, oppressive, and wrong, and ought to be remedied.

"Now for the provisions of the bill. It provided that the persons of African descent, before alluded to, shall have all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, respectively, and in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively. Is this wrong? The Choctaw and Chickasaw nations are under treaty obligations to secure these people the rights, privileges, and immunities, of citizens, including the right of suffrage. They ought to have done so long since. Their failure to do so is a great wrong, and a great injustice, which should be speedily corrected. But ought these people to have an equal right in the annuities and public domain of the Choctaw and Chickasaw nations? Let us see. The present annuity fund of these nations amounts to about $100 per capita. The United States, by the treaty aforesaid, secured to these persons of African descent, under certain conditions, $100 per capita, and that is about what the said $300,000 amounts to.

"By the second section of the bill objected to, this $300,000 is to be invested and paid in trust for the use and benefit of the Choctaw and Chickasaw nations, so that these persons of African descent will bring to the trust fund of said nations a sum per capita equal to the amount per capita of the present annuity trust fund of the nations.

"This, it seems to me, answers satisfactorily the objections to the bill so far as it relates to the rights of the Africans in the annuity funds of the Choctaw and Chickasaw nations.

"But the bill also gives to these Africans an equal right in the public domain claimed by said nations. Is this wrong? Lands are not held in severalty by these nations; they are held in *common*. The treaty contemplated making the Africans *citizens*, with equal rights and privileges with the Choctaws and Chickasaws, and *upon this principle*, in justice and equity, the common property of the nations should

belong as much to the Africans made citizens, as to the native-born citizens of said nations.

"The argument against this provision, drawn from a pretended analogy between this case and the case of the liberated slaves of the United States, does not rest upon a solid foundation. The liberated slaves of the United States did not become entitled to the property held by individual citizens of the United States, in severalty, but to so much of the public domain and other property of the United States as was not the separate property of individuals. These liberated slaves, when they became citizens, did become entitled to equal rights and privileges as other American citizens.

"If you look at the manner in which the Choctaw and Chickasaw nations acquired their property, and if you consider that the improvements made thereon have been made by the labor of the African people, in as large, if not larger proportion, than by the labor of native Choctaws and Chickasaws, you will see that there is not any injustice in giving to these persons of African descent, made free and made citizens, equal rights in all respects with native Choctaw and Chickasaw people.

"A failure to pass this bill will leave the treaty of 1866 unexecuted; will continue the African people among the Choctaws and Chickasaws in their present unjust and disastrous situation; will preserve the strife, animosity, and disturbance incident to these relations, and therefore I can not too earnestly or too urgently recommend the passage of the bill during the present session of Congress.

"I beg your careful and attentive consideration of this subject, and hope you will bring it before such of your colleagues as feel an interest in the welfare of these people, and that if you concur with me in this opinion you will endeavor to secure the passage of the measure referred to immediately."

Like other projected measures of legislation designed to correct the mistakes made in negotiating the treaty of 1866, and to remedy the wrong brought thereby upon the Choctaw and Chickasaw freedmen, the bill referred to failed to become a law. It may be that this failure of legislation was due, as much as anything else, to the poverty of these people, and their consequent inability to provide for the employment of competent legal counsel to represent them and to press their case before Congress.

DUTY OF UNITED STATES AS TO FREEDMEN OF THE FIVE CIVILIZED TRIBES.

Justice I. C. Parker, in the case of United States *v.* D. L. Payne, tried in the United States district court for the western district of Arkansas, in the May term, 1881, referring to the right of the Government to locate freedmen in the country ceded by the Seminole Nation by treaty of 1866, containing the language, "In compliance with the desire to locate other Indians and freedmen thereon," says:

"We find that colored people were held in slavery in all the civilized tribes of the Indian Territory. Slavery was abolished there, as well as elsewhere in the United States, by the emancipation proclamation of the President, and by the thirteenth amendment to the Constitution, adopted the 13th of December, 1865, and such abolition was recognized by these tribes in the several treaties made with them in 1866.

"The Government was desirous of protecting these freedmen and of securing them homes. It was not known how well the several tribes who had held them in slavery would observe their pledges to secure them the same rights they enjoyed. It was feared that prejudice, growing out of their former condition as slaves, and of race, would be so strong against them that they would not be protected by the Indians. The Government had given them the boon of freedom, and it was in duty bound to secure it, in all that the term implied to them."

That this duty would ultimately be fully performed by the United States—notwithstanding the long delay of year after year—the Choctaw freedmen confidently hoped and believed; and they as confidently hoped and believed that reparation would be made, as far as possible, for the damage and injury suffered during the long years of waiting.

INJUSTICE SUFFERED BY CHOCTAW FREEDMEN.

The unsettled condition of the Choctaw and Chickasaw freedmen, and the need for some speedy adjustment of the matter, was frequently mentioned in the annual reports and other documents by the Indian Office, and of the Department of the Interior.

Agent T. D. Griffith, in his annual report for 1872, referring to these freedmen, says:

"But it is of great importance that they should somewhere have well-defined rights. As they are here now, I can not encourage them to make permanent improvements; and without them they are but hewers of wood for others. There should also be means provided for the education of their children. They are not able to employ suitable teachers, and the consequence is, many of these children are growing up ignorant, *as their fathers* were before them. It would cost something to

establish a school system for them and carry it on until they could do it themselves, but they will do all in their power to aid, and it will be cheaper to educate them than to allow them to grow up, as they are now growing, in ignorance." (Annual Report Indian Office, 1872, p. 238.)

The Commissioner of Indian Affairs, in his annual report for 1874, page 70, says:

"The negroes who were formerly owned as slaves by the Choctaws and Chickasaws are in an anomalous condition. They have their freedom, but are without equal rights and privileges. There is no reason in justice and equity why these negroes should not be treated by the Government as a constituent part of these Indian nations, and share with them in all the right of landed property and educational facilities. They are orderly, industrious, and eager for the education of their children, and yet are obliged to spend their labor upon farms to which they have no title, and which, when once well improved, are not infrequently taken from them. Their children grow up in ignorance in sight of schoolhouses in which they may not enter."

Such quotations from official reports might be continued to a further extent. The foregoing are deemed sufficient to show that at least from the close of the war of the rebellion till the Choctaw legislature passed the act of May 21, 1883, adopting the Choctaw freedmen, the Choctaw freedmen continued to exist under great disadvantages, without any pretense at fulfillment of even treaty stipulations concerning them, either by the Choctaw Nation or by the United States.

No positive remedy can reach those who have passed away under unmerited afflictions. Nor can the damage and injury suffered by the living be wholly repaired; but the fullest possible measure of justice should be secured to them, especially for the benefit of the rising generation.

INSUFFICIENCY OF LAW ADOPTING CHOCTAW FREEDMEN FOR FULFILLMENT OF EVEN TREATY STIPULATIONS.

There has been little improvement in the condition of the Choctaw freedmen in many respects since the passage of the Choctaw act of May 21, 1883 (copy herewith, Exhibit 2).

Under that law no equal or adequate facilities for the education of their children are provided. No sufficient protection in the use and occupation of even the forty acres of the public domain guaranteed to them in the treaty of 1866 is secured. In these and many other respects the laws enacted by the Choctaw Nation are not equal in their operation upon the Choctaws and the negroes. No survey has been made by the United States of the Choctaw domain, as stipulated and provided in the treaty of 1866. This failure has added greatly to the embarrassments suffered by the Choctaw freedmen in the use and occupation of land for cultivation, and hindered them in asserting their claims for protection against intrusion upon their improvements and the fruits of their labors, or for dispossession thereof.

When said Choctaw act of May 21, 1883, was submitted to the Commissioner of Indian Affairs, as a compliance with the treaty provisions on the subject, it was objected to by him as not a satisfactory and sufficient compliance with the stipulations of the treaty. and as not calculated to secure the objects and purposes of said treaty stipulations. He therefore declined to give it his approval, but recommended that either the freedmen be removed to the Oklahoma district or that stringent laws be passed compelling the respective tribes to adopt their freedmen, as provided in their treaty. (See Annual Report Indian Office, 1883, p. 53.)

The Secretary of the Interior, however, subsequently held that the said act was a substantial compliance with the third article of the treaty of 1866. (See Annual Report Indian Office, 1884, p. 45.)

Accordingly, money appropriated by the act of Congress of May 17, 1882, for the education of the freedmen was paid to the Choctaw Nation instead.

Subsequently final balance of the claim of the Choctaw Nation upon the $300,000 mentioned in the treaty of 1866, was placed to the credit of that nation, and its obligations under the treaty, so far as making the laws, rules, and regulations required by the treaty, have been treated as closed.

The practical operation of the provisions of that act of the Choctaw legislature has demonstrated how unsatisfactory and insufficient it is for securing and accomplishing the intents, objects, and purposes of the treaty stipulations on behalf of and for the benefit of the Choctaw freedmen. The children of the Choctaw freedmen are yet growing up in ignorance because of the inadequacy and insufficiency of proper school facilities and advantages. The Choctaw freedmen have no proper security and protection in their homes, property, etc., and whether or not the laws be considered equal in their provisions and purposes, without distinction against the Choctaw freedmen, they are not equal in their application and operation. The Choctaw freedmen feel and suffer the effects and results of discrimination against them in the administration of all departments and branches of the Choctaw government.

In the midst of such embarrassment the Choctaw freedmen have very little of the hope of better things to encourage them to industry, to make permanent improvements in their homes, or other proper efforts to advance in civilization.

The Choctaw freedmen have believed it to be, as it has been judicially declared to be, the duty of the United States, which gave them the boon of freedom, "to secure it, in all that the term implied, to them." They have waited and hoped, and are still waiting and hoping, that the United States will put them in possession and enjoyment of all the rights, privileges, and immunities, without any sort of limitation or distinction thereon, possessed and enjoyed by the Choctaw citizens by blood. And they appeal to the United States, and to your honorable Commission to whom they have been referred by the honorable Secretary of the Interior as the representative of the United States in these matters, to effectuate, by proper, just, and suitable negotiations, the necessary arrangements for securing to them full rights, privileges and immunities as Choctaw citizens, as well in the national estate as otherwise. And they further urge that such arrangements and provisions be so framed and made as to cover the past and present unjust discrimation and the consequent injuries resulting therefrom, as well as to relieve them from any future discrimination, injury, etc.

The immigrant recently landed upon the shores of the United States who has taken the preliminary steps of citizenship becomes entitled to appropriate as much of the public domain as a native-born American citizen, though he has done nothing to defend and maintain the Government, nothing to increase the value of the public domain, and nothing to add to the wealth of the country.

Why were not the Choctaw freedmen, born upon the soil of the United States, with the right of domicil and domiciled in the Choctaw country, whose labor had largely contributed to the wealth of the Choctaw Nation, given an equal interest with the Choctaw citizens by blood, in the lands and other common property of the Choctaw Nation?

To be a citizen of a free country, under a government of the people, by the people, and for the people, without the right to share in the common property of that government, is an absurdity. Such base citizenship inspires no loyalty, but debases and degrades the citizen, and dishonors the government that bestows it.

THE POWER OF CONGRESS TO REMEDY TREATY WRONGS BY LEGISLATION.

It is in the power of the United States, through Congress, to remedy the wrongs brought upon the Choctaw freedmen by the unjust treaty of 1866.

"Under the Constitution, treaties as well as statutes are the law of the land; both the one and the other, when not inconsistent with the Constitution, stand upon the same level, and being of equal force and validity; and, as in the case of all laws emanating from an equal authority, the earlier in date yields to the later." (Op. of Att'y Gen'l U. S., Dec. 15, 1870, 13 Op., 354.)

"A treaty may supersede a prior act of Congress (Foster and Elam *v.* Neilson, 2 Peters, 314) and an act of Congress may supersede a prior treaty (Tailor *v.* Morton, 2 Curt., 454; The Clinton Bridge, 1 Walworth, 155). In the cases referred to, these principles were applied to treaties with foreign nations. Treaties with the Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved and require their faithful observance, cannot be more obligatory. They have no higher sanctity, and no greater inviolability or immunity from legislative invasion can be claimed. The consequences in all such cases give rise to questions which must be met by the political department of the Government. They are beyond the sphere of judicial cognizance." (The Cherokee Tobacco, 11 Wall., 616.)

"In short, we are of opinion that, so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification, or repeal." (Head-money cases, 112 U. S., 580; Whitney *v.* Robertson, 124 U. S., 190; Chinese exclusion cases, 130 U. S., 581.)

CLAIMS OF THE CHOCTAW FREEDMEN.

No claims not warranted by right and justice are asserted by the Choctaw freedmen.

FULL RIGHTS AS CHOCTAW CITIZENS, AND INDEMNITY FOR PAST WRONGS AND INJURIES.

The Choctaw freedmen claim that they should have and enjoy, and should be secured by the United States in the full possession and enjoyment of, all the rights, privileges, and immunities, including the right of suffrage, of citizens of the Choctaw Nation, and also *including the right to share* per capita in the annuities, moneys,

and public domain claimed by or belonging to said nation. They claim that these rights should have been fully secured to them by the United States when the treaty of 1866 was negotiated and concluded; and that the loss, damage, and injury suffered by them by reason of the failure to secure them in the full and equal rights of Choctaw citizens, including the estate of the Choctaw Nation, should be repaired and provided for as far as possible.

This is the claim which they present for consideration of your Commission. And they ask that the fullest possible measure of their claim, within the power of your commission to obtain, be secured to the Choctaw freedmen.

The mistakes and injuries of the past, as well as the hardships and wrongs of the present, suffered by the Choctaw freedmen, should be kept in view in any present or future negotiations that may be had and concluded with the Choctaw Nation; or in any laws that may be enacted by Congress in ratification of any agreements that may be negotiated with them by the United States; or in any laws that may be enacted in carrying out any policy that may be adopted by the Congress with reference to the Choctaw Indians, upon failure of negotiations with them for modification of their existing treaties; and such remedies as may be right and just should be provided.

CLAIM TO AN INTEREST IN THE "LEASED DISTRICT" PAYMENTS.

In the Indian appropriation act of March 3, 1891, provision was made for the payment to the Choctaw and Chickasaw nations of $2,991,450 as additional compensation for a part of the Choctaw "Leased district." In submitting that matter to Congress for further consideration President Harrison, in his special message of February 17, 1892, said:

"In view of the fact that the stipulations of the treaty of 1866, in behalf of the freedmen of these tribes, have not, especially in the case of the Chickasaws, been complied with, it would seem that the United States should, in a distribution of this money, have made suitable provision in their behalf. The Chickasaws have steadfastly refused to admit the freedmen to citizenship, as they stipulated to do in the treaty referred to, and their condition in that tribe, in a lesser degree in the other, strongly calls for the protective intervention of Congress." (Senate Ex. Doc. No. 42, Fifty-second Congress, first session, p. 3.)

That money has been paid to the Choctaws and Chickasaws; and it has been paid out to the Choctaw citizens by blood. The Choctaw freedmen have not received any portion thereof, nor derived any benefits from that large sum of money, a part of the Choctaw national estate.

A much larger sum is yet claimed by the Choctaw and Chickasaw nations for the remainder of said "Leased district," the payment of which they are expecting to receive when the pending agreements made with other Indians residing upon the land shall have been ratified by Congress.

The part payment already made upon the "Leased district" claim may be taken as a recognition, at least, by the United States, that there is merit in the further payment claimed by the Choctaw Nation on that account, when the remainder of said "Leased district" lands shall be opened to public settlement. It will require legislation by Congress to finally settle that claim. The Choctaw freedmen most respectfully and humbly urge and insist that in any plans, propositions, and arrangements considered by your Commission, in your negotiations with the Choctaw Nation, looking to any agreement with that nation, proper stipulations be incorporated therein for securing to the Choctaw freedmen a just and equitable share of any money that may be hereafter paid to the Choctaw Nation, or the citizens thereof, on account of that claim. They certainly indulge the hope that "the protective intervention of Congress," so strongly urged by President Harrison in their behalf as to the legislation for the payment already made on that claim, may be interposed without any failure in any future legislation on the subject.

THE SURVEY OF THE CHOCTAW LANDS.

The Choctaw freedmen desire and claim that the lands of the Choctaw Nation be surveyed, and also that provision be made for title in severalty to the Choctaw freedmen to the land to which they are justly entitled. They desire this that they may select and settle upon, and cultivate and improve their holdings, establish and furnish their homes, and surround themselves with more of the comforts of life, with some adequate security that they will be fully protected in the use and enjoyment of the fruits of their labors.

SUITABLE EDUCATIONAL FACILITIES.

The Choctaw freedmen desire, claim, and urge that sufficient and suitable provisions and facilities be secured to them at the earliest possible moment for the proper education of their children.

They were for so many years without schools of any sort, and those educational facilities now accorded to their children are so meager and limited that the Choctaw freedmen enjoy almost nothing of the great benefits of education. Their ignorance is pitiable and deplorable.

The past can not be redeemed; but the future can be made so bright that the past, if not atoned for, may be buried and forgotten. They therefore most humbly implore your honorable Commission to provide amply for the education of their children. We would not insult the intelligence and statesmanship of your Commission by consuming more of your time in urging the necessity and benefits of education to the rising generation of the Choctaw freedmen. These benefits we can not have while we continue in our present embarrassed condition; and our poverty is too universal for us to provide, as we should and desire, for the education of our children.

FULL AND EQUAL PROTECTION UNDER JUST LAWS.

Finally, we appeal for emancipation and extrication from our present peculiar and deplorable condition and embarrassments.

We claim and urge that our status be so clearly established, fixed, and defined that we shall be free in deed and in fact, in all that freedom implies. That we be secured in full and adequate protection under just and equal laws, in our person, our property, and our liberty.

When we shall be thus made free, with an equal chance for our lives, liberties, and homes, we shall be encouraged to set ourselves diligently about the task of improving our condition and surroundings, elevating ourselves, and advancing in the ways of civilization.

We ask that your Commission make such personal investigation as may be necessary to satisfy you of the facts in any of the matters herein alleged.

As you will see by the proceedings of our convention, Hon. R. V. Belt, of Washington, D. C., and Hon. Joseph P. Mullen, of Fort Smith, Ark., have been retained as our attorneys in these matters.

Valuable information concerning the Choctaw freedmen will be found in the following public document, one copy of which is herewith submitted:

Senate Ex. Doc. No. 82, Fortieth Congress, second session.
Senate Ex. Doc. No. 71, Forty-first Congress, second session.
H. R. Mis. Doc. No. 46, Forty-second Congress, second session.
H. R. Ex. Doc. No. 212, Forty-third Congress, first session.

We have the honor to be, very respectfully, your obedient servants,

E. D. COLBERT,
D. B. BARROWS,
WESLEY MCKENNEY,
Committee of the Choctaw Colored Citizens' Association.

R. V. BELT, *Washington, D. C.*,
J. P. MULLEN, *Fort Smith, Ark.*,
Attorneys and Counselors for the Choctaw Colored Citizens' Association.

STATEMENT OF THE CHICKASAW FREEDMEN,

SETTING FORTH

THEIR WRONGS, GRIEVANCES, CLAIMS, AND NEEDS.

1894.

Submitted to HON. HENRY L. DAWES, Chairman,
HON. MEREDITH H. KIDD,
HON. ARCHIBALD S. MCKENNON,
United States Commission to the Five Civilized Tribes of Indians,
Muscogee, Indian Territory.

By CHAS. COHEE,
ISAAC C. KEMP,
GEO. W. HALL,
MACK STEVESON,
Committee of Chickasaw Freedmen's Association.

Hon. HENRY L. DAWES, *Chairman*,
Hon. MEREDITH H. KIDD,
Hon. ARCHIBALD S. MCKENNON,
Commission to the Five Civilized Tribes, Muscogee, Ind. T.

GENTLEMEN: The undersigned, a committee appointed by the Chickasaw freedmen in convention assembled, as shown by the accompanying copy of the proceedings of said convention, to present to and lay before your honorable Commission the grievances, condition, claims, and the wants of the Chickasaw freedmen, most respectfully request that you give careful consideration to the "Memorial of the Chickasaw freedmen," adopted at said convention, and contained in the copy of the proceedings thereof before referred to; and also to what we, the duly authorized and empowered committee of the said convention of Chickasaw freedmen shall herein present in their behalf.

THEIR HOPE AND CONFIDENCE IN THE DAWES COMMISSION.

Coming, as does your honorable Commission, to the Indian Territory, with the authority of Congress, to negotiate with the Five Civilized Tribes, to such extent as will "enable the ultimate creation of a State or States of the Union which shall embrace the lands within said Indian Territory," the Chickasaw freedmen, whose domicile is within the Chickasaw country, where they have been born and reared, and where they have treaty rights unfulfilled, deem it right and proper that they should lay before your honorable Commission their condition and grievances, and present to you their claims, needs, and wants. And they do this with the greater confidence, because they recognize in the members of your honorable Commission men of great ability and broad statesmanship, desirous of ascertaining the true state and condition of the whole of the population domiciled within the domain of several Indian nations comprising the Five Civilized Tribes; what rights, if any, they have, their grievances, and the wrongs they have suffered, and not only anxious, but abundantly able to find and report what is the true remedy for the existing evils, and the proper measure of relief for those who have been compelled to suffer injustice at the hands either of the Chickasaw Nation or the United States.

The chairman of your Commission, the Hon. Henry L. Dawes, is a statesman of exalted national reputation, having had long and wide experience in both Houses of the Congress of the United States, where he was recognized as peculiarly and especially skilled in all matters concerning the relation of the Indian and negro population of the country to the United States Government, and where his wisdom and statemanship have contributed to the satisfactory solution and adjustment of so many of the difficult problems connected therewith. Therefore we the more rejoice that it is our high privilege to lay our matters before your Commission, and we indulge in great hope that the dark night of our existence will soon give way to the dawn of a better day.

ATTORNEYS FOR THE CHICKASAW FREEDMEN.

We have secured for cooperation with our local attorney, Hon. Joseph P. Mullen, of Fort Smith, Ark., the assistance of Hon. R. V. Belt, late Assistant Commissioner of Indian Affairs, and so long connected with the Indian branch of the Department of the Interior under Secretaries Teller, Lamar, Vilas, and Noble, in the future prosecution of our claims, so long neglected for want of proper help.

TREATY PROVISIONS CONCERNING CHOCTAW AND CHICKASAW FREEDMEN.

The treaty relations between the Choctaw and Chickasaw nations of Indians existing at the outbreak of the war of the rebellion were broken and interrupted during that conflict, when loyalty to the United States was renounced and adhesion to the Southern Confederacy was proclaimed by treaty, and in which many of the members of those nations gave active aid against the United States. After the close of that conflict, which resulted in the emancipation of African slavery wherever it existed in this country, it became necessary to reconstruct and reestablish treaty relations between the United States and the Five Civilized Tribes in the Indian Territory. The treaty of April 28, 1866, with the Choctaw and Chickasaw nations is the result as to them.

The provisions of that treaty, so far as they sought to establish and fix the status of the persons of African descent, formerly held in slavery by the Chickasaw Indians, and their descendants, are found in articles two, three, and four thereof, which are as follows:

"ART. III. The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in punishment of crime whereof the parties shall have been duly convicted, in accordance with laws applicable to all members of the particular nation, shall exist in said nations."

"ART. III. The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98th degree west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent, in trust for the said nations, until the legislature of the Choctaw and Chickasaw nations respectively shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nations, at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said lands, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter—less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations respectively within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said territory in such manner as the United States shall deem proper—the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations."

"ART. IV. The said nations further agree that all negroes, not otherwise disqualified or disabled, shall be competent witnesses in all civil and criminal suits and proceedings in the Choctaw and Chickasaw courts, any law to the contrary notwithstanding; and they fully recognize the right of the freedmen to a fair remuneration on reasonable and equitable contracts for their labor, which the law should aid them to enforce. And they agree on the part of their respective nations that all laws shall be equal in their operation upon Choctaws, Chickasaws, and negroes, and that no distinction affecting the latter shall at any time be made, and that they shall be treated with kindness and be protected against injury; and they further agree that while the said freedmen, now in the Choctaw and Chickasaw nations, remain in said nations, respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families, in cases where they do not support themselves and families by hiring, not interfering with existing improvements without the consent of the occupant, it being understood that in the event of the making of the laws, rules, and regulations aforesaid, the forty acres aforesaid shall stand in the place of the land cultivated as last aforesaid." (14 Stat., 769.)

NONFULFILLMENT OF TREATY STIPULATIONS.

The stipulations of the treaty of 1866, concerning the Chickasaw freedmen, have never been fulfilled nor carried out. The action of both parties to that treaty, the United States and the Chickasaw Nation, can best be shown by the acts passed by the Congress of the United States and by the Chickasaw legislature. It must be remembered that the Chickasaw freedmen had no voice in the making of the treaty of 1866, and were in no wise represented in the making thereof, except as their interests may have been looked after by the United States.

ACTION BY THE CHICKASAW LEGISLATURE.

November 9, 1866, the Chickasaw legislature passed an act declaring it to be the *unanimous desire of* the legislature that the United States hold the share of the *Chickasaw Nation* in the $300,000, stipulated for the cession of the "Leased dis-

trict," for the benefit of the Chickasaw freedmen, and remove them beyond the limits of the Chickasaw Nation according to the third article of the treaty of 1866.

In 1868, similar action was taken by the Chickasaw legislature asking for the removal, by the United States, of the Chickasaw freedmen from the Chickasaw country.

January 10, 1873, the Chickasaw legislature passed an act entitled "An act to adopt the negroes of the Chickasaw Nation, etc." That act was submitted by the governor of the Chickasaw Nation, by letter of the same date, to the President of the United States, and was submitted by the Secretary of the Interior to the Speaker of the House of Representatives, on February 10, 1873, with recommendation for appropriate legislation for extending the time for the execution of the third article of the treaty. The papers were referred to the Committee on Freedmen Affairs, but no action thereon was had. (See Annual Report Indian Office, 1882, p. 57; and H. R. Ex. Doc. 207, Forty-second Congress, third session.

October 18, 1876, the Chickasaw legislature adopted a resolution providing for a commission, to confer with a like Choctaw commission, looking to the agreement upon some plan for removing and keeping the freedmen from the Choctaw and Chickasaw country (Chickasaw laws, 1878, p. 148).

February 17, 1877, the Chickasaw legislature passed an act entitled "An act confirming the treaty of 1866." In section 3 thereof, "the United States are requested to remove the said negroes beyond the limits of the Chickasaw Nation according to the requirements of the third article of the treaty of April 28, 1866" (Chickasaw laws, 1890, p. 121).

October 4, 1887, the Chickasaw legislature passed the following:

"And, whereas, the Chickasaw people have kindly and friendly feeling towards the freedmen, their former slaves, and wishing them to receive full valuation of the places they live upon, for their support, as provided for in section 4 of the treaty of 1866, do hereby agree that they shall have two years from the passage of this act to sell their improvements in the Chickasaw Nation to the best advantage, that no loss may accrue to them: Therefore,

Be it resolved by the legislature of the Chickasaw Nation, That the nation shall refund to the United States the sum of $55,000 to be used in removing the freedmen in the Chickasaw Nation to their new home as provided under the third and fourth articles of the treaty of 1866, made between the United States and the Choctaw and Chickasaw nations of Indians." (See Sen. Ex. Doc. 166, Fiftieth Congress, first session.)

The Chickasaw legislature had previously, on October 22, 1885, passed an act rejecting the adoption of the freedmen of the Chickasaw Nation (Chickasaw laws, 1890, p. 171).

ACTION BY THE CONGRESS OF THE UNITED STATES.

In the Indian appropriation act of May 17, 1882, the following provision of law was enacted by Congress:

"That the sum of ten thousand dollars is hereby appropriated out of the three hundred thousand dollars reserved by the third article of the treaty with the Choctaws and Chickasaws concluded April 8 (?), 1866, for the purpose of educating freedmen in said tribes, to be expended under the direction of the Secretary of the Interior, three-fourths thereof for the freedmen among the Choctaws, and one-fourth for the freedmen among the Chickasaws: *Provided*, That said sum of ten thousand dollars shall be deducted in like proportion from any moneys in this act appropriated to be paid said Choctaws and Chickasaws: *And provided further*, That either of said tribes may, before such expenditure, adopt and provide for the freedmen in said tribe in accordance with said third article, and in such case the money herein provided for such education in said tribe shall be paid over to said tribe, to be taken from the unpaid balance of the three hundred thousand dollars due said tribe" (22 Stat., 72).

(Under and subsequent to the foregoing provision of law the Choctaw national legislature passed an act adopting the freedmen of the Choctaw Nation.)

In the Indian appropriation act passed by Congress, August 15, 1894 (Public No. 197, p. 56), the following is contained:

"SEC. 18. That the approval of Congress is hereby given to 'An act to adopt the negroes of the Chickasaw Nation,' and so forth, passed by the legislature of the Chickasaw Nation and approved by the governor thereof, January 10, 1873, particularly as set forth in a letter from the Secretary of the Interior, transmitting to Congress a copy of the aforesaid act, contained in House Executive Document numbered two hundred and seven, Forty-second Congress, third session."

What effect, if any, this action by Congress will have upon the status of the Chickasaw freedmen, in view of the subsequent action of the Chickasaw legislature, directly the reverse of its action in the said act of January 10, 1873, is a problem for future solution. It is at least encouraging to the Chickasaw freedmen, notwithstanding it seems to be confusing an already badly confounded matter. It indicates

a desire on the part of the Congress of the United States to do something to carry out its pledges on behalf of the Chickasaw freedmen; and we feel sure that any proper and feasible plan for their relief that shall be formulated and presented by you for the consideration of Congress will receive consideration and action by that body.

ACTION BY THE CHICKASAW FREEDMEN.

The Chickasaw freedmen have waited many long and weary years for the settlement of their status, and the adjustment of their rights, privileges, immunities, claims, etc., so that they might have some security in the enjoyment of the fruits of their labors, educate their children, and surround themselves and their homes with some of the comforts of civilization. From time to time they have memorialized the United States, and laid their grievances before such officers thereof as they could reach, and who would hear them.

When the Chickasaw legislature passed the act of 1866 against the adoption of the Chickasaw freedmen, the latter, by a petition, represented to the United States the bitter feeling existing against them among the Chickasaws, and stated their anxiety to leave the Chickasaw country, and that they would settle on any land that might be designated for them by the United States; and they asked that transportation to such designated land be provided for themselves and families, and that they be furnished with supplies sufficient to enable them to make a start in their new homes.

No attention was given to this petition.

A similar petition was presented on June 10, 1868, which was laid before Congress but no action was taken thereon (see Senate Ex. Doc. 82, Fortieth Congress, second session).

In February, 1869, a delegation of the freedmen went to Washington and there submitted a memorial urging the fulfillment by the United States of the treaty stipulations.

Nothing was accomplished by this mission.

Complaints were presented from time to time, of the denial of rights, privileges, etc., to the freedmen by the Chickasaws; that their children were growing up in ignorance, and that they were all in great distress and poverty; but no action for our relief was taken, except, as shown hereinbefore, in the act of Congress of 1882; and that extended only for the one year, and only for the education of our children, to the extent of $2,500. With that exception our children, growing up in the very midst of the most advanced civilization of the age, have been absolutely with no greater advantages for their education than if they were living in the very heart of the "Dark Continent."

CONDITION AND TRIALS OF THE CHICKASAW FREEDMEN.

From and after the ratification of the treaty of 1866, the condition of the Chickasaw freedmen has frequently been made the subject of investigation and report by officials of the United States. The results of these investigations can be ascertained by reference to the special reports, in the proper archives of the United States Government.

The annual reports of the United States Indian agents having charge of the Chickasaw Indians, as well as the annual reports of the Commissioner of Indian Affairs, as will be found by reference to the published volumes thereof, have year after year represented the wretched and deplorable condition of these Chickasaw freedmen; and have urged such appropriate and necessary legislation as the facts and circumstances from time to time seemed to them to require and warrant, to afford the proper relief.

In his annual reports for 1869 and 1870, the United States Indian agent, George T. Olmstead, captain, United States Army, strongly urged the necessity for the settlement of the status of the Chickasaw freedmen; and he suggested the negotiation of a supplemental treaty, under which they could be fairly settled and established as citizens of the Choctaw and Chickasaw nations (see Indian Office Annual Report, 1869, p. 409, and 1870, p. 292).

United States Indian agent, T. D. Griffith, in his annual reports for the years 1871 and 1872, invites special attention to the condition of the Choctaw and Chickasaw freedmen. In the latter report he says:

"As they are here now, I can not encourage them to make permanent improvements, and without them they are but hewers of wood for others. There should also be means provided for the education of their children. They are not able to employ suitable teachers, and the consequence is many of these children are growing up ignorant as their fathers were before them. It would cost something to establish a school system for them and carry it on until they could do it themselves, but they will do all in their power to aid, and it will be cheaper to educate them than to allow them to

grow up as they are now growing, in ignorance." (See Ind. Office Annual Rpt., p. 238.)

In his annual report for 1873, United States Indian agent, A. Parsons, stated that—

"Some of the freedmen are improving farms and accumulating property. They seem very well satisfied, in all respects, except their uncertainty of their right to vote and the want of any educational opportunities for them. The honorable Secretary of the Interior decided that they clearly had the right to vote, but the disposition of the Chickasaws and Choctaws have been to oppose it, and the freedmen have, therefore, not voted for fear of offending them. The freedmen seem very anxious to have school privileges, and say they will furnish school buildings if by any means teachers and books can be obtained for them." (See Ind. Office Annual Rpt., p. 209.)

Hon. Edward P. Smith, Commissioner of Indian Affairs, states as follows, in his annual report for 1874, page 71:

"The negroes who were formerly owned as slaves by the Choctaws and Chickasaws are in an anomalous condition. They have their freedom, but are without equal rights and privileges. There is no reason in justice or equity why these negroes should not be treated by the Government as a constituent part of these Indian nations, and share with them in all the rights of landed property and educational facilities. They are orderly, industrious, and eager for the education of their children, and yet are obliged to expend their labor upon farms to which they have no title, and which once well improved are not infrequently taken from them. Their children grow up in ignorance, in sight of schoolhouses which they may not enter."

Action was strenuously urged upon Congress in the matter by Hon. Hiram Price, Commissioner of Indian Affairs, in his annual reports for 1881, 1882, 1883, and 1884.

Hon. J. D. C. Atkins, Commissioner of Indian Affairs, in his annual report for 1887, concludes a brief statement of the previous action of the United States with reference to the Chickasaw freedmen, as follows:

"During the year several complaints have been received from the freedmen relative to the denial of their rights, and particularly as to the utter lack of educational facilities. Recently Agent Owen held a conference with some of the leading freedmen, at which they expressed a desire to remain in the nation if their rights, especially in the matter of schools, could be accorded them, but signified their willingness to submit to the decision of the Government. The Chickasaw authorities positively refuse to take any steps looking to their adoption, and even refuse to provide for their education. This reluctance to carry out the stipulations of the treaty, is doubtless caused in great measure by the fear that the freedmen will out vote the Chickasaws, they being fully as numerous as the Indians. These people, therefore, whose rights, protection, and education were guaranteed by treaty, are left in ignorance, without civil or political rights, and with no hope of improvement.

Under these circumstances, I believe their removal from the nation is the only practicable method by which they can be afforded education and other privileges. It has been decided by Judge Parker, of the district court of the western district of Arkansas, that the United States may settle freedmen belonging to the Five Civilized Tribes upon lands acquired from the Seminoles and Creeks, and Agent Owen suggests that the Chickasaw freedmen be removed to that portion of Oklahoma lying on the Canadian River, west of the Pottawatomie Reservation.

"Many of the freedmen have doubtless made improvements on the lands which they and their fathers have occupied but not possessed; and if, because they can acquire no title thereto, they are forced to abandon these improvements, it would be but sheer justice to pay them the full value thereof, in addition to the $100 per capita which the treaty promised them if they should emigrate.

"I have no reason to suppose that the Chickasaws would object to legislation requiring them to return the $55,125 to the United States, provided, by the same legislation, they could be relieved of the presence of their freedmen. Congress has heretofore been asked to enact the necessary legislation for the removal of these freedmen, and in my opinion the recommendation should be renewed. A special report upon the subject with a draft of the necessary legislation will be prepared and submitted for your consideration before the meeting of Congress." (See pp. LXIII and LXIV.)

The foregoing is reiterated in his special report on the subject to the Secretary of the Interior, Hon. Wm. F. Vilas, who submitted said report with the draft of the bill, and the detailed and full information accompanying it, to the Congress for its consideration and action, on May 9, 1888. (See Senate Ex. Doc. 166, Fiftieth Congress, first session.)

We will not further weary your patience, nor consume your valuable time with recitals from the published reports of the officers of the United States Government, whose duty it is to present the facts, as to the condition of the Chickasaw freedmen to the attention and consideration of Congress, except to quote from the report of Dew. M. Wisdom, United States Indian agent for 1893, the following:

"The status of the freedmen also in the Chickasaw and Cherokee nations is a 'vexed problem.' In the former nation those people have never by any law or statute of that nation been incorporated into its 'body politic.' They do not vote or hold office, and are denied participation in its funds devoted to educational purposes. The negroes are clamorous for schools and for full recognition of their rights as citizens of the nation. Many of them were slaves to Chickasaw masters or owners, and were born upon Chickasaw soil, are well grounded in the customs and usages of that people, and speak the language as fluently as the natives themselves. They predicate their right to citizenship upon article 4 of the treaty of 1866, and upon the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution of the United States. This class of citizens, it is said, exceed in number the native population, and the Chickasaws in defense of their denial to them of the rights of citizenship assert that if the negroes were made citizens they would take charge of the Government and convert it into another Hayti. Doubtless this fear has controlled their course toward them; but nevertheless the condition of the negro is one to be deplored, and it would seem to be difficult to mitigate or remedy, and I have felt it my duty to suggest their condition to the Indian Bureau, without further amplification in the way of details." (See Indian Office Annual Report, 1893, p. 145.)

When we look at the condition of the Creek and Seminole nations, with their large preponderance of persons of African descent and blood, admitted by their treaties of 1866 to full membership into those nations, with equal rights in the nation's funds, domain or other estate, and behold the peace and prosperity within their borders, we must insist that the fears of the Chickasaws that the full adoption of the Chickasaw freedmen as Chickawaw citizens, with the right to share in the national estate, in whatever character or form it exists, will be detrimental to the welfare and interests of the Chickasaw Nation are not well founded. Some other reason must be found for their excuse for denying to the Chickasaw freedmen their just rights, privileges, and claims. Whether that reason be selfishness or unwillingness to accord that justice and equity to their freedmen that they insist for themselves from the United States or otherwise, is left to those who must pass in judgment upon these matters to determine.

Under a resolution of the Senate, March 29, 1894, the committee on the Five Civilized Tribes of Indians, of which Hon. H. M. Teller is chairman, visited the Indian Territory "to inquire into the present condition of the Five Civilized Tribes of Indians, and the white citizens dwelling among them, and the legislation required and appropriate to meet the needs and welfare of such Indians."

While this resolution did not in terms authorize an inquiry as to that class of persons who are neither Indians or white citizens, a class of persons left by Congress in 1866 without defined rights, and with no certain status, and whose condition and existence have been almost continuously ignored during the past twenty-eight years, the committee thought proper to bring to the attention of the Congress the following:

"The Indians maintain schools for their own children. The Choctaws, Cherokees, and Creeks maintain schools for the children of recognized colored citizens, but the Chickasaws have denied to these freedmen not only the right of suffrage, especially provided for in the treaty of 1886, but have also denied the children of freedmen the right to participate in their schools. We find in the Chickasaw country a freedman population somewhat in excess of that of the Indian population, not only deprived of citizenship, but denied the privileges of schools, so that the children of that class are growing up in ignorance, except in a few cases where schools have been maintained by individual means for the education of the freedmen children. This is a plain and open violation of the treaty of 1866."

The committee might have added further that this condition had existed since the making of the treaty of 1866. However, the committee did not complete its work, for it concluded its report as follows:

"As the matters submitted are so complicated and of such grave importance, the committee has thought proper to submit this preliminary report, and hopes, upon further investigation, to be able to make such further and more specific recommendation as to necessary legislation as will lead to a satisfactory solution of this difficult question." (See Senate Report No. 377, Fifty-third Congress, second session.)

This promise of prospective legislation holds out to us a gleam of hope, especially when the standing of the men making the report is considered.

It remains for your commission to present to the Congress some feasible plan of legislation for correcting the existing evils, to secure early legislation on the subject.

Such is our condition as officially reported by the constituted authorities of the United States. We are willing to let it pass without any further amplification. We might add material evidences and facts that would more strongly represent our real situation; but we do not desire even to seem to exaggerate our wrongs, distress, and embarrassments.

Surely we will not be left much longer in our deplorable situation.

Had we existed under such wrongs and hardships in any other land, we believe

that our cries for relief would ere this have been heard by the sympathetic and liberty-loving people of this country; and we would not only have had their pity, and their benevolence reached out to lift us out of our degredation and distress, but such influence in our behalf would have been exerted that the good offices of this great Government would have interposed for the amelioration of our condition long ere this.

We are prone to believe that had our cries of distress come from some distant island of the sea, instead of from the midst of an Indian tribe right here in the United States, the power and influence of the Government of the United States would have been exerted to extricate us from our bondage and barbarism.

Many have died in the midst of great sufferings while waiting and hoping for deliverance; they are now past relief here; others survive, suffer, and hope, having grown up in ignorance, and without the comforts of the civilization that surrounds them, and whose benefits they have longed for; others, still, are growing up to manhood and womanhood, and unless relief soon comes to us another generation must bear through life the blight of wrong and injustice which were inflicted upon their fathers and mothers.

Full and adequate remedy can never be provided. But the measure of relief to the living, and especially to the rising generation, should be as commensurate with the evils endured as it is possible to afford after the lapse of so great a time.

FAILURE OF CONGRESS TO ENACT PROPOSED LEGISLATION FOR FULFILLMENT OF TREATY STIPULATIONS, AND FOR RELIEF OF CHOCTAW AND CHICKASAW FREEDMEN.

The necessity for legislative action in the mater of the Chickasaw freedmen has been laid before Congress at various times, by the Executive Department of the Government, always urging speedy action, and sometimes submitting drafts of proposed legislation, which the condition, circumstances, justice, and equity of their case seemed to demand.

The efforts in this direction, to some extent, are shown by the contents of various Congressional documents on the subject, some of which are here briefly set forth:

Senate Exe. Doc. No. 82, Fortieth Congress, second session, contains a petition from delegates of the Choctaw and Chickasaw freedmen, stating the failure of their adoption by the legislatures of the Choctaw and Chickasaw nations, and asking that the $300,000, stipulated in the treaty to be held for their benefit, be so used; and that they be removed from the Choctaw and Chickasaw country. This petition, with other papers, was submitted to Congress, with a letter from the Secretary of the Interior, Hon. O. H. Browning, dated July 20, 1868, informing that body of the terms of the treaty as to the freedmen; that the two years within which the legislatures of the nations should act had expired, and the freedmen had not been adopted; and that the duty of their removal, consequently, devolved upon the United States as a treaty obligation; but as no place had been designated to which they should be removed, and no funds provided, by treaty or otherwise, to defray the expense of removal, no action could be taken until Congress should enact the necessary legislation for carrying the treaty into effect. Early attention was earnestlyinvited to the subject. Congress did not heed this appeal; and no place was designated, and no funds were provided for the removal of the freedmen in fulfillment of the treaty obligations.

The Executive Document H. R. No. 207, Forty-second Congress, second session, contains the act of the Chickasaw legislature, of January 10, 1873, providing for the adoption of the Chickasaw freedmen. This was submitted to Congress by the Secretary of the Interior, concurring in the recommendation of the Commissioner of Indian Affairs, that necessary and appropriate legislation, suggested in the correspondence, be enacted.

It is remarkable that Congress, with such an opportunity for doing something in the matter, neglected to use it, and took no action on that enactment of the Chickasaw legislature for the adoption of their freedmen, from 1873 till 1894, a period of over twenty-one years, during which the Chickasaw legislature had, by several acts passed at different times, taken action directly the reverse of that contained in the act of 1873. By a provision in the Indian appropriation act of August 15, 1894, Congress gave its approval to the Chickasaw act of 1873, as hereinbefore set forth. This may involve the Chickasaw freedmen in a more doubtful status, which they fear not only will not be solved to their advantage, but will, on the other hand, serve to protract the delay in securing effective legislation for their relief.

The Executive Document, H. R. No. 212, Forty-third Congress, first session, contains the draft of a bill submitted to Congress by Acting Secretary of the Interior B. R. Cowan, by his letter of April 4, 1874, wherein he urged its adoption for the relief of the Choctaw and Chickasaw freedmen.

That proposed legislation recites, so far as necessary for its purpose, the provisions of the treaty of 1866; states the failure of fulfillment thereof; that the freedmen

were then anxious to remain in the Choctaw and Chickasaw country and to become incorporated as citizens thereof; and it provided—

"That all persons of African descent who were resident in the territory of the Choctaw or Chickasaw nations on the 28th day of April, A. D. 1866, and who had before that been held in slavery among said nations, or either of them, and all the descendants of such persons, shall be entitled to all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, respectively, and the annuities, moneys, and public domain claimed by or belonging to said nations, respectively."

The further provisions of said proposed legislation provided for disposing of the $300,000 held under the treaty of 1866, and for carrying the measure into effect.

In urging Congress to take that action, the Acting Secretary, Mr. Cowan, said:

"Almost eight years have passed since the ratification of the treaty above referred to, and the legislatures of the Choctaw and Chickasaw nations have not enacted any laws, rules, and regulations in behalf of the persons of African descent above referred to.

"The ancestors of these negroes came to the Indian Territory with the Choctaw and Chickasaw nations from the State of Mississippi, and have been with them continuously since that time in the capacity of slaves. They were freed by the treaty of 1866, and have been since enjoying the privileges of freedom. They are reported to be industrious, sober, and frugal people, desirous to learn, anxious to secure to themselves homes in severalty, and, above all, anxious to remain in the country where they now live, and which is the only home they have ever known. And, so far as the Department has been able to ascertain, none of them will ever leave that country voluntarily. They have formed strong attachments to the soil; they have acquired, as far as the peculiar laws and regulations governing the Indian nations will permit, homesteads, and have cultivated farms. A strong prejudice seems to exist against these freedmen on the part of the Choctaw and Chickasaws, which will account in some measure for the failure of these nations to provide by law for the division among them of the lands of the nations.

"The Creek, Seminole, and Cherokee nations have each adopted the freedmen into their tribes, and given them equal rights and privileges with other citizens of the nation. The Choctaws and Chickasaws, I understand, have refused to do so. The condition of these negroes strongly appeals to the United States Government for some action that will fix their status, and give them all that they are entitled to by the terms of the treaty above quoted.

"I have the honor to submit herewith the draft of a bill which in my judgment will secure to these freedmen all the rights and privileges to which they are entitled under the treaty. The bill also gives them the right of suffrage, and an equal share in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively. While this may not be exactly in accordance with the letter of the treaty, I am satisfied that it is simply a matter of justice to this class of persons who have always been residents of said nations and who are now industrious, law abiding, and useful citizens thereof.

"I respectfully invite the attention of Congress to this subject and trust that it may receive favorable consideration."

The legislation thus proposed met with the opposition of the Choctaws and Chickasaws, who have always been able to have near the Capitol of the United States, especially during the sessions of Congress, duly accredited representatives, to watch legislation, and to otherwise look out for the interests of said nations respectively. It is not complained that this is so. It is right that they should take care of their affairs. But if the Choctaw and Chickasaw freedmen had been possessed of a small portion of the wealth that their years of unrequited toil had secured to the Choctaw and Chickasaw people, they too would have had active and energetic representatives present to intelligently press these measures for their relief.

As usual, the cause of the freedmen was strongly espoused by the executive branch of the Government. The Senate Committee on Indian Affairs sent the objections to the proposed bill, made by the representatives of the Choctaw and Chickasaw nations, to the Secretary of the Interior, for the report of his views thereon. His report is contained in Senate Mis. Doc. No. 118, Forty-third Congress, first session, wherein, after setting forth the then condition of the freedmen, Secretary C. Delano expressed his views vigorously and forcibly, as follows:

"Now for the facts. Neither the Choctaw nor the Chickasaw nations have secured to said persons of African descent the rights, privileges, and immunities, including the right of suffrage, provided for in the treaty. The United States has not removed any of said persons of African descent, because such persons are so identified by marriage and customs with said nations as to be unwilling to break up their homes and go elsewhere.

"*The $300,000* has not been invested nor paid to the Choctaw and Chickasaw

nations; and the said persons of African descent, who are the most industrious and useful portion of the population of each nation, are without the rights, privileges, and immunities of citizens, without the right of suffrage, without land, and without money, and with a disinclination, under all these painful embarrassments, to leave their homes, friends, and relatives, and go elsewhere for the pitiful sum of $100 per capita. They are as meritorious, to say the least, as the average Choctaw and Chickasaw population. They have probably done as much toward securing the wealth possessed by said nations, per capita, as the average Choctaw and Chickasaw population. Under these circumstances their condition is not simply anomalous; it is unjustifiable, oppressive, and wrong, and ought to be remedied.

"Now for the provisions of the bill. It provides that the persons of African descent, before alluded to, shall have all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, respectively, and in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively. Is this wrong? The Choctaw and Chickasaw nations are under treaty obligations to secure these people the rights, privileges, and immunities of citizens, including the right of suffrage. They ought to have done so long since. Their failure to do so is a great wrong and a great injustice, which should be speedily corrected. But ought these people to have an equal right in the annuities and public domain of the Choctaw and Chickasaw nations? Let us see. The present annuity fund of these nations amounts to about $100 per capita. The United States, by the treaty aforesaid, secured to these persons of African descent, under certain conditions, $100 per capita, and that is about what the $300,000 amounts to.

"By the second section of the bill objected to this $300,000 is to be invested and paid in trust for the use and benefit of the Choctaw and Chickasaw nations, so that these persons of African descent will bring to the trust fund of said nations a sum per capita equal to the amount per capita of the present annuity trust fund of these nations.

"This it seems to me answers satisfactorily the objections to the bill so far as it relates to the rights of the Africans in the annuity funds of the Choctaw and Chickasaw nations.

"But the bill also gives to these Africans an equal right in the public domain claimed by said nations. Is this wrong? Lands are not held in severalty by these nations; they are held in *common*. The treaty contemplated making the African citizens with equal rights and privileges with the Choctaws and Chickasaws, and upon this principle, in justice and equity, the common property of the nations should belong as much to the African made citizens as to the native-born citizens of said nations.

"The argument against this provision drawn from a pretended analogy between this case and the case of the liberated slaves of the United States does not rest upon a solid foundation. The liberated slaves of the United States did not become entitled to the property held by individual citizens of the United States in severalty, but so much of the public domain and other property of the United States as was not the separate property of individuals these liberated slaves when they became citizens did become entitled to equal rights and privileges as other American citizens.

"If you look at the manner in which the Choctaw and Chickasaw nations acquired their property, and if you consider that the improvements made thereon have been made by the labor of the African people in as large, if not larger, proportion than by the labor of native Choctaws and Chickasaws, you will see that there is not any injustice in giving to these persons of African descent, made free and made citizens, equal rights in all respects with native Choctaw and Chickasaw people.

"A failure to pass this bill will leave the treaty of 1866 unexecuted; will continue the African people among the Choctaws and Chickasaws in their present unjust and disastroussituation; will preserve the strife, animosity, and disturbance incident to their relations, and therefore I can not too earnestly or too urgently recommend the passage of the bill during the present session of Congress.

"I beg your careful and attentive consideration of this subject, and hope you will bring it before such of your colleagues as feel an interest in the welfare of these people, and that if you concur with me in this opinion you will endeavor to secure the passage of the measure referred to immediately."

This clear and forcible exposition of the justice of the then pending measure shows how strongly the executive branch of the Government of the United States has become convinced of the great injustice brought upon the Chickasaw freedmen by the ratification of the treaty of 1866.

The presence of active and energetic agents representing the Chickasaw Nation before the committees of Congress, and the absence of any such representatives of the freedmen, may account for the failure of enactment by Congress of that or some other remedial legislation for the fulfillment of the treaty stipulations as to the Chickasaw freedmen, and for securing to them the rights in the estate of the Chickasaw Nation to which they are so justly entitled.

The Senate Ex. Doc. No. 166, Fiftieth Congress, first session, contains another effort to secure legislation for the relief of the Chickasaw freedmen. That is the measure drawn under the direction of Hon. J. D. C. Atkins, Commissioner of Indian Affairs, providing for their removal to the Oklahoma district, the appraisement of and payment for their improvements before removal, and the payment to them of a per capita distribution of money to enable them to make a start in their new homes. That measure was submitted to Congress by Hon. Wm. F. Vilas, Secretary of the Interior, as hereinbefore shown, but, like all other appeals and measures presented to Congress for the relief of the Chickasaw freedmen, or even for carrying out the stipulations of the treaty which secured to them such limited, base, and indifferent rights, privileges and immunities, it bore no fruit whatever.

It is thus seen that Congress has taken no action for the fulfillment of its treaty obligations on behalf of the Chickasaw freedmen, nor adopted any measures for their permanent relief, notwithstanding the urgent requests made therefor by the Executive branch of the Government as above shown.

As late as the administration of President Harrison, Congress was appealed to for remedial legislation in their behalf, as will hereinafter appear, but it failed to embrace the opportunity then presented to accomplish something for their relief.

THE DUTY OF THE UNITED STATES TO SECURE NOT ONLY FREEDOM BUT JUSTICE TO THE FORMER SLAVES OF THE FIVE CIVILIZED TRIBES.

Justice I. C. Parker, in the case of United States *v.* D. L. Payne, tried in the United States district court for the western district of Arkansas, in the May term, 1881, referring to the right of the Government to locate freedmen in the country ceded by the Seminole Nation by treaty of 1866, containing the language "In compliance with the desire to locate other Indians and freedmen thereon," says:

"We find that colored people were held in slavery in all the civilized tribes of the Indian Territory. Slavery was abolished there as well as elsewhere in the United States by the emancipation proclamation of the President and by the thirteenth amendment to the Constitution, adopted the 13th of December, 1865, and such abolition was recognized by these tribes in the several treaties made with them in 1866.

"The Government was desirous of protecting these freedmen and of securing them homes. It was not known how well the several tribes who had held them in slavery would observe their pledges to secure them the same rights they enjoyed. It was feared that prejudice growing out of their former condition as slaves and of race would be so strong against them that they would not be protected by the Indians. The Government had given them the boon of freedom, and it was in duty bound to secure it, in all that the term implied, to them."

That this duty would ultimately be fully performed by the United States, notwithstanding the long delay of year after year, the Chickasaw freedmen confidently hoped and believed, and they confidently hoped and believed, that reparation would be made as far as possible for the damage and injury suffered during the long years of waiting.

There has not only been delay and neglect on the part of the United States in the performance of its clear duty toward the Chickasaw freedmen, but there has been absolute injustice and great damage to them in what has been done.

WHO IS RESPONSIBLE FOR THE UNJUST TREATY DISCRIMINATION AGAINST THE CHICKASAW FREEDMEN?

The Chickasaw freedmen had no voice in the making of the reconstruction treaty of 1866 with the Choctaws and Chickasaws. They had just been relieved from the bondage of slavery, as the result of the war of the rebellion. Their interests and welfare were wholly and absolutely in the keeping and power of the United States. For whatever they received, whether of good or evil, the United States must have the credit or bear the blame.

The time to have settled forever their status was when the treaty of 1866 was negotiated.

The treaty rights of those nations had been forfeited. They were seeking their restoration. Justice and right should then have been insisted upon for the freedmen. No treaty should have been concluded that did not secure to the freedmen the fullest rights that they were justly entitled to. The failure to do what should then have been done has not only entailed untold hardships and misery upon the Chickasaw freedmen that no legislation can ever fully remedy, but this problem so left unsolved, and the protracted delay, and the aggregated neglect to define, fix, settle, and establish the status and rights of the Chickasaw freedmen have made a dark page on the history of the United States.

The United States entered upon the negotiations for reestablishing the treaty relations with the Cherokees, Creeks, Seminoles, and the Choctaws and Chickasaws, *comprising* the Five Civilized Tribes, with the right purpose in view, and upon just

principles. The commission charged with the preliminary negotiations went to their duty with the distinct instructions that such treaties must contain seven distinct stipulations; the third of these stipulations, which they presented to each tribe, read as follows:

"The institution of slavery, which has existed among several of the tribes, must be forthwith abolished, and measures taken for the unconditional emancipation of all persons held in bondage, and for their incorporation into the tribes on an equal footing with the original members, or suitably provided for." (See Annual Report Indian Office, 1865, pp. 298, 320, etc., and H. R. Report No. 3147, Fifty-first Congress, first session, p. 11.)

The Chickasaw delegates, at least those representing the element in that nation that had remained loyal to the United States, expressed their assent to that proposition without change or qualification.

That the United States did not insist upon engrafting that stipulation into the treaty of 1866, that was finally concluded, has been a cause no less of wonder than of trouble and distress.

The provisions on the subject that were incorporated in that treaty show great skill in the methods of negotiation, and high attainments in the art of diplomacy, on the part of the Choctaw and Chickasaw nations and the learned counsel they employed and paid so well for assisting them in conducting those negotiations.

What was stipulated was shown by the second, third, and fourth articles of that treaty. The adoption of the freedmen was left optional with the Choctaw and Chickasaw legislatures. If they did not adopt the freedmen within two years from date of ratification of the treaty, the United States were to remove them elsewhere, pay each $100, etc.

The promise was little; the performance has been nothing by either party to the treaty.

Let us see what was accomplished for the freedmen of the other tribes among which slavery had existed.

In the treaty of 1866, with the Creeks, this provision is made:

"ART. II. The Creeks hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted in accordance with laws applicable to all members of said tribe, shall ever exist in said nation; and inasmuch as there are among the Creeks many persons of African descent who have no interest in the soil, it is stipulated that hereafter those persons lawfully residing in said Creek country under their laws and usages, or who have been thus resident in said country, and may return within one year from the ratification of this treaty, and their descendants, and such others of the same race as may be permitted by the laws of the said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens (thereof) shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe." (14 Stat., 786.)

In the treaty of 1866, with the Seminoles, Article II is to the same effect. (14 Stat., 756.)

In the Cherokee treaty of 1866 the right to occupy and improve the land and "all the rights of native Cherokees" are accorded to the Cherokee freedmen, and certain other free colored persons, by articles 4, 5, 6, 7, 8, 9, etc. (14 Stat., 800.)

When it is thus seen how fully the former slaves of the Creek, Seminole, and Cherokee nations were adopted as citizens of those nations, with equality of rights of other members by blood of those nations, in the respective national estates, it is past understanding why the same measure of justice was not insisted upon by the United States for the freedmen of the Choctaw and Chickasaw nations.

The status of the former slaves of the Indian tribes, among which slavery existed, after their liberation as a result of the war of the rebellion, was not in many respects analogous to that of the liberated slaves of the other sections of the country. The latter were made citizens of the United States, and of the States in which they resided, by amendment to the Constitution. They became thereby owners in common, with equal rights and interests, with all other citizens of the United States, in all of the common property of the United States; and with the citizens of their respective States, of the common property of said States, and became entitled to full and equal enjoyment of all benefits and advantages derived therefrom.

If the land and other property in the States had been held in common by the citizens thereof, instead of in severalty, as was and is the case, the former slaves and newly made citizens would have become entitled to a pro rata share thereof according to their numbers.

As the land, invested funds, annuities, and other moneys belonging to or claimed by the Chickasaw Nation and constituting the estate of said nation were—as they are

yet—held in common by the citizens of the Chickasaw Nation, the former slaves of the Chickasaw Indians, when liberated as a consequence of the war of the rebellion, should have been recognized at once as Chickasaws in all respects, and entitled to all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nation, and also including the right to share equally with the citizens of said nation in the annuities and other moneys and public domain belonging to or claimed by said nation. If this was not right and just, why was it required of the Creeks, Seminoles, and Cherokees, of the Five Civilized Tribes, as hereinbefore set forth?

Had the latter nations been more disloyal to the United States than the Choctaws and Chickasaws? Or were the former slaves of the latter less deserving than those of the other nations? Certainly the unjust discrimination against the Chickasaw freedmen can not be justified on these accounts.

THE POWER OF CONGRESS TO REMEDY TREATY WRONGS BY LEGISLATION.

It is in the power of the United States, through Congress, to remedy the wrongs brought upon the Choctaw freedmen by the unjust treaty of 1866.

"Under the Constitution, treaties as well as statutes are the law of the land; both the one and the other, when not inconsistent with the Constitution, stand upon the same level and being of equal force and validity; and, as in the case of all laws emanating from an equal authority, the earlier in date yields to the later." (Op. of Attorney-General U. S., Dec. 15, 1870, 13 Op., 354.)

"A treaty may supersede a prior act of Congress (Foster and Elam *v.* Neilson 2, Peters, 314), and an act of Congress may supersede a prior treaty. (Taylor *v.* Morton, 2 Curt., 454; The Clinton Bridge, 1 Walworth, 155). In the cases referred to these principles were applied to treaties with foreign nations. Treaties with Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved and require their faithful observance, can not be more obligatory. They have no higher sanctity, and no greater inviolability or immunity from legislative invasion can be claimed. The consequences in all such cases give rise to questions which must be met by the political department of the Government. They are beyond the sphere of judicial cognizance. (The Cherokee Tobacco, 11 Wall, 616.)

"In short, we are of opinion that, so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification, or repeal." (Head-Money Cases, 112 U. S., 580; Whitney *v.* Robertson, 124 U. S., 190; Chinese Exclusion Cases, 130 U. S., 581.)

The Chickasaw freedmen have no redress for the evils brought upon them by the treaty of 1866, and no remedy for the wrongs they have consequently suffered thereunder, except through legislation by Congress.

While no more treaties are made with the Indian tribes of the country by the treaty-making power of this Government, agreements are entered into between the United States and said tribes, which, if acceptable, are ratified by acts of Congress, and become the law of the land. Your Commission can, if the Chickasaws are willing, negotiate an agreement with them for our relief. If this can not be accomplished to the satisfaction of all parties, then we ask that you formulate and propose to Congress such legislation as you may be able to recommend for our relief, and for fixing and defining our status, taking into your careful consideration the requests herein presented.

THE CHOCTAW AND CHICKASAW CLAIM FOR ADDITIONAL COMPENSATION FOR THE "LEASED DISTRICT" LANDS, AND PRESIDENT HARRISON'S APPEAL FOR USING A PORTION OF THE MONEY FOR THE FREEDMEN.

It is well known that the Choctaw and Chickasaw nations of Indians asserted claim to further compensation to the land known as the "leased district," ceded by the treaty of 1866 to the United States, claiming that the cession made by that treaty was only for the purpose of locating other Indians and freedmen on said lands, and that if other disposition be made of said lands by the United States, they should have further compensation therefor.

When Congress had under consideration the opening to public settlement of the surplus lands of the Cheyenne and Arapahoe Reservation, a portion of which was included in the said "Leased district," it gave full consideration to the claim of the Choctaw and Chickasaw nations for further compensation for said land, and finally appropriated the sum of $2,991,450.

President Harrison was not satisfied that the United States were legally or equitably bound to pay the Choctaw and Chickasaw nations anything further for said lands, holding that the treaty of 1866 passed the full title of the Indians to and in said lands.

So fully was he impressed with his belief on the subject he declined to pay over the money to those nations, but resubmitted the matter for the further consideration of Congress, taking occasion, in his special message on the subject, to call

attention to the facts that preparations were being made by those nations to distribute that money to the members thereof by blood only, excluding from participation therein the white persons adopted into the tribes, and also the former slaves thereof, and their descendants.

In this latter connection he said:

"In view of the fact that the stipulations of the treaty of 1866, in behalf of the freedmen of these tribes, have not, especially in the case of the Chickasaws, been complied with, it would seem that the United States should, in a distribution of this money, have made suitable provision in their behalf. The Chickasaws have steadfastly refused to admit the freedmen to citizenship, as they stipulated to do in the treaty referred to, and their condition in that tribe, and in a lesser degree in the other, strongly calls for the protective intervention of Congress." (Senate Ex. Doc. No. 42, Fifty-second Congress, first session, p. 3.)

The matter was further considered by Congress and resulted in a resolution affirming the position already taken by that body as to the justice of the claim of the Choctaw and Chickasaw nations.

The money has, accordingly, been paid over by the United States to the credit of the proper authorities of those nations; and it has been by those nations distributed to the members thereof by blood only.

When that claim was first reported upon by the Indian Office, attention was invited to the unfulfilled treaty stipulations as to the Chickasaw freedmen, and it was urged:

"In any adjustment that may be made of this claim the interests of the Chickasaw freedmen should be guarded and protected." (See H. R. Report No. 3147, Fifty-first Congress, first session, p. 15.) Congress, however, failed to take any action to guard and protect the interests of the Chickasaw freedmen in its adjustment of the claim as recommended by the Indian Office, or to interpose any protective intervention in behalf of the Chickasaw freedmen in the distribution of the money, as so strongly urged by President Harrison.

The amount already paid is for so much of the "Leased district" as was within the boundaries of the Cheyenne and Arapahoe Reservation, opened to public settlement April 19, 1892. The balance of the claim is for so much of the "Leased district" as is within the reservations of the Kiowa and Comanche, and the Wichita, etc., Indians, embracing an area of 3,712,503 acres, which, at the same rate of additional compensation—$1.05 per acre—allowed for the proportion in the Cheyenne and Arapahoe reservations (aggregating nearly $3,000,000), makes the balance of that claim amount to about $3,520,264.65, the allowance and payment of which the Choctaw and Chickasaw nations are seeking from Congress in connection with the ratification of the pending agreements, with the occupying tribes above-named, for opening the surplus lands to public settlement.

The nearly $3,000,000 already paid to the Choctaws and Chickasaws in part settlement of their claim may be taken as a recognition, at least, by Congress that the claim is an equitable one, and that full payment will ultimately be made, unless the trust upon which the lands are recognized to be held is applied.

The Chickasaw freedmen received no share of the nearly $3,000,000 heretofore paid, nor have they been participants in anywise in the benefits of said payment. But of that immense sum of money not a schoolhouse was built for the education of the children of the freedmen, now and heretofore growing up in ignorance in the Chickasaw country, and not a cent of it was in any way used to ameliorate and improve the condition or to advance the welfare and interests of the Chickasaw freedmen.

Will Congress pay the balance of the claim and make no provision out of it for the benefit of the Chickasaw freedmen? Will Congress let what seems to be the last opportunity pass without applying some suitable remedy for the wrongs and sufferings of the Chickasaw freedmen at the hands of the Chickasaw Nation?

The claims of the Chickasaw Nation upon the Government of the United States in the matter of this claim are certainly no greater and no more just than are the claims of the Chickasaw freedmen herein presented. If "the protective intervention of Congress," so strongly but vainly urged by President Harrison in behalf of the Chickasaw freedmen, for a share of the payment already made is not interposed in their behalf when the legislation is enacted as to the balance of the claim, then the Chickasaw freedmen can see little hope but to look to the Treasury of the United States alone for redress of their grievances and payment of the claims they have for damages and otherwise resulting to them, not only by reason of failure of fulfillment of treaty stipulations, but by reason of unreasonable and unjust treaty discrimination against them.

RIGHTS OF THE CHICKASAW FREEDMEN IN THE "LEASED DISTRICT."

It will be observed that in the third article of the treaty of 1866, by which the Choctaws and Chickasaws ceded "to the United States the territory west of the 98° west longitude, known as the leased district," there are no words of express limitation upon the title to said land thus conveyed to the United States.

That cession is unlike the cession made at the same time by the Cherokees, Creeks, and Seminoles.

The trust upon which the United States received the lands ceded by these latter nations will be found as follows:

In article 16 of the Cherokee treaty of 1866 (14 Stat., 804). In article 3 of the Creek treaty of 1866 (14 Stat., 786). In article 3 of the Seminole treaty of 1866 (14 Stat., 756).

In the treaties with the Creeks and Seminoles the trust is expressed in these words:

"In compliance with the desire of the United States to locate other Indians and freedmen thereon."

There are no such words in the Choctaw and Chickasaw treaty; but those nations were able to satisfy the Congress of the United States, by reference to the records of the negotiations and otherwise, that it was the intention of the parties to that treaty that the lands ceded thereby were coupled with the same trust as expressed in the treaties with the Creeks and Seminoles.

The Chickasaw Nation strongly urged this contention, as will appear in the declarations of B. C. Burney and Overton Loce, their accomplished and intelligent delegates, in their "memorial of the Chickasaws relating to the President's message of February 17, 1892," presented to Congress February 26, 1892, wherein they said:

"The President expresses the opinion that the conditions attached to the cessions in the Creek and Seminole treaties of 1866 were the same as those which were attached to the lease in the Choctaw and Chickasaw treaty of 1855, and that, therefore, the claim of the Choctaws that the cession in their latter treaty of 1866 was encumbered by a condition, or trust, is not supported by any analogies of the Creek and Seminole cases. This is a mistake. The trusts created in the Creek and Seminole treaties of 1866 were trust (1) for the location of friendly Indians, in general, without restriction, and (2) for the location of freedmen. Neither of these two trusts were created by the Choctaw and Chickasaw treaty of 1855. Neither of them existed, in the case of the leased district, until created by the Choctaw and Chickasaw treaty of 1866. The trust created by the Choctaw and Chickasaw treaty of 1855 was a trust not to locate Indians in general but to locate certain Indians whose ranges were included within the boundaries designated in the treaty. This treaty of 1855 contained no trust whatever for the location of freedmen. That trust was first created for the leased district by the Choctaw and Chickasaw treaty of 1866.

"It is true that these two trusts of the Choctaw and Chickasaw treaty of 1866 are not created by express words qualifying the grant; but this is also true of the Creek and Seminole treaties. In those treaties the trusts are not expressed, but are implied in words used in recitals only. They are not implied in either of those treaties in words used in the body of the grant. The recital in each case is in the following words: 'In compliance with the desire of the United States to locate other Indians and freedmen thereon,' etc. The words of the grant are even stronger in the Creek and Seminole treaties than in the Choctaw and Chickasaw treaty. The Choctaws and Chickasaws 'cede;' but the Creeks and Seminoles 'cede and convey.'

"These trusts, in the Choctaw and Chickasaw treaty of 1866, are implied in the language of the third article, in which the words of conveyance, the statement of consideration, and the arrangements for the freedmen are placed in such juxtaposition as not only to warrant, but to necessitate the inference that it was the object of the parties and the effect of the treaties to authorize the United States to locate upon these lands Indians whose ranges were not embraced within the limits designated in the treaty of 1855, and also to locate Choctaw and Chickasaw freedmen thereon, and that the cession was encumbered by corresponding trusts. (See Senate Mis. Doc. No. 82, Fifty-second Congress, first session.)

The same position had been taken by the Chickasaws in their memorial, presented to Congress March 19, 1890, by B. C. Burney, chairman Chickasaw commission, and J. D. Collins and Overton Love, Chickasaw delegates, wherein they state as follows:

"One-fourth of the interest of the Choctaws in the proceeds of the land west of the one hundredth meridian had been acquired by the Chickasaws in the purchase of 1837.

"On the 28th day of April, 1886, the Choctaws and Chickasaws, by a treaty of that date, conveyed a trust estate in the lands between the ninety-eighth and one hundredth meridians to the United States. The trust created by this treaty was to remove to and settle on said lands 3,000 Choctaw and Chickasaw freedmen, if willing to be removed. These lands thenceforth remained subject to the trust for the settlement of Indian tribes and bands, whose homes and ranges were within certain designated limits, which trust had been created by the lease of 1855, and also subject to this second trust for the settlement of freedmen thereon. But the Choctaws and Chickasaws surrendered and lost by this treaty all right to settle on those lands themselves, which right had been reserved by the lease of 1855. The United States have located upon the lands west of the ninety-eighth meridian a small number of Indians, and

have also paid for the emigration thereto of 72 Choctaw freedmen. Whether these freedmen emigrated to said lands, or remained in the Choctaw or Chickasaw district, your memorialists are not advised. (See Senate Mis. Doc. No. 107, Fifty-first Congress, first session.)

That contention was settled in favor of the claims of the Choctaws and Chickasaws, as will be seen by the report of the Senate Committee on Indian Affairs, of which Senator Henry L. Dawes was chairman, which declared as follows:

In the message of the President, transmitted to Congress February 17, 1892, he says:

"After a somewhat careful examination of the question, I do not believe that the lands for which this money is to be paid were, to quote the language of section 15 of the Indian appropriation bill already set out, 'ceded in trust by article 3 of treaty between the United States and said Choctaw and Chickasaw nations of Indians, which was concluded April 28, 1866.'

"The President is of the opinion that the lands in question were not ceded in trust to the United States by this treaty. He thinks that an absolute, unqualified title was conveyed by the treaty, and as he elsewhere says, that the United States paid the Choctaws and Chickasaws therefor the sum of $300,000. On the contrary your committee believe that the estate conveyed was a trust estate only; that whereas the treaty of 1855 empowered the United States to locate upon those lands only those Indians whose ranges were included within certain specified limits, this treaty of 1866 authorized the United States—

"(1) To locate upon these lands Indians like the Cheyennes and Arapahoes, whose ranges were not within the limits designated in the treaty of 1855, and whom, prior to the treaty of 1866, the United States had no right to locate upon the lands.

"(2) To locate upon the lands Choctaw and Chickasaw freedmen.

"(3) Deprived the Choctaws and Chickasaws themselves of the right to settle thereon." (See Senate Report No. 552, Fifty-second Congress, first session, p. 11.)

Provision was made for the payment of the portion of the claim then contended for, by the act of March 3, 1891 (26 Stat., 1025), appropriating the sum of $2,991,450.

There are within the occupancy of the Kiowa and Comanche and the Wichita, etc., Indians 3,712,503 acres, which is the remainder of the "leased district," and the basis of the unsettled portion of the claim of the Choctaw and Chickasaw nations for additional compensation.

The statement of these facts and conclusions are here set forth to serve as the basis of an alternative proposition for the settlement of the claims of the Chickasaw freedmen, to be hereinafter stated.

CLAIMS OF THE CHICKASAW FREEDMEN.

The Chickasaw freedmen claim

FULL AND EQUAL RIGHTS, ETC., AS CHICKASAW CITIZENS.

They insist that they were justly and equitably entitled to be, and that they should have been invested, by the treaty of 1866, with full and equal rights, privileges, and immunities with the Chickasaw citizens by blood, including the right of suffrage, the right to equal educational privileges for their children, the right to equal protection under equal and just laws, and the right to share equally in the annuities and other moneys, and in the public domain claimed by and belonging to the Chickasaw Nation, or in which said nation is interested. And that the refusal and denial of the rights so claimed, and the failure and neglect to secure to them said rights, etc., the same as were secured for the freedmen of the Creek and Seminole nations, have been the cause of great damage, loss, and injury to the Chickasaw freedmen, for which they are justly and equitably entitled to indemnification.

The Chickasaw freedmen claim and insist that they be now invested with the full rights, etc., so claimed.

The Chickasaw freedmen claim and insist that they be now indemnified for the damage, loss, and injury sustained and suffered by them from 1866 till they shall be invested with the full rights as Chickasaw citizens, and for the damage, loss, and injury, sustained and suffered by them by reason of the denial of said rights and the failure and neglect to secure said rights to them; and also by reason of the failure and neglect of both parties to the treaty of 1866, or either of them, as shall be determined to fulfill and carry out the stipulations for the very limited rights and benefits provided for them thereunder.

The measure of their claim for indemnification for damages, etc., can be ascertained by the statement of an account of the moneys that have come into the possession of the Chickasaw Nation from payment of annuities, licenses, taxes, and other public charges, and from payments for lands, or on any other account; and prorating the moneys so received between the Chickasaws who received the benefits thereof, and the former slaves of Chickasaws and their descendants.

The amount of the damage, etc., so ascertained, to be paid by the United Sta directly out of the Treasury, or by the Chickasaw Nation out of its national fun according as it shall be determined which of the parties are chargeable for su damages, etc.

The funds of the Chickasaw Nation in the custody of the United States, amou to $1,337,695.65 (not including certain permanent treaty provisions for goods), up which that nation receives annually from the United States as interest the sum $68,221.44.

Out of the payment of the claim for damages the Chickasaw freedmen desire a propose to provide suitable and sufficient educational facilities for their childr and otherwise improve their condition and surroundings.

The Chickasaw freedmen also desire and claim that when they shall be inves with the full rights, etc., so claimed, the lands occupied by the Chickasaw Nat should be surveyed and sectionized, and that provision be made for title in several at least to the Chickasaw freedmen, for the quanity thereof that they would severally entitled to have and to hold.

The Chickasaw freedmen claim and insist that the foregoing claims are rig just, and equitable; and they insist and urge that said claims be adjusted by agreement between the United States and the Chickasaw Nation; and that claim for damages, etc., be speedily paid to and for the Chickasaw freedmen.

PLANS FOR THE ADJUSTMENT OF THE CLAIMS OF THE CHICKASAW FREEDMEN.

We greatly desire that the adjustment of our claims be effected by an agreem between the United States and the Chickasaw Nation. That the adjustment be su as shall be just to both parties, the Chickasaw Nation, and the Chickasaw fre men, and also to the United States. We desire to remain in the land of our bir among the people with whose language, customs, and habits we are trained and fan iar, and whose friendship we desire and esteem, and against whom we have refrai from stating anything in this paper not necessary to a clear presentation of our ca

If, however, it is found impossible to so adjust our said relations and claims, tl and in that event we insist and urge that the adjustment be made by the appropri and necessary legislation by Congress. Both the right and the duty of Congress do this have been hereinbefore shown.

ANOTHER FEASIBLE METHOD FOR ADJUSTMENT.

If the claims and relations of the Chickasaw freedmen can not be adjusted either of the plans above suggested, and it shall be found absolutely necessary the Chickasaw freedmen to remove from the Chickasaw country, for the public w fare as well as for their own best interests, then, as a dernier resort, we suggest tl a sufficient quantity of the surplus lands within the present reservations of Kiowa and Comanche and the Wichita, etc., Indians, which comprise what rema of the "leased district," be set apart and designated as the land for the location the Chickasaw freedmen, under the treaty of 1866. That the said freedmen removed to said land at the expense of the United States. That an appropriat be made of a sum sufficient to pay to each of said freedmen entitled thereto, a capita payment of $100, as provided for in the treaty of 1866, with interest ther from the date said per capita payment should have been made to the date of payment thereof. That the quanity of land so set apart and designated for the lo tion of the said freedmen thereon shall contain a sufficient number of acres, whi at the rate of $1.05 per acre, will cover the fair and reasonable amount of damag loss, and injury sustained and suffered by the Chickasaw freedmen, by reason the failure and neglect of the parties to the treaty of 1866, to secure to them th just and equitable rights, and the denial, refusal, and neglect of said parties to f fill the stipulations of that treaty providing for the very limited rights and bene as therein set forth, and also for the value of the improvements made and put by th on land in the Chickasaw country. That the land so set apart and designated the location of the Chickasaw freedmen be allotted and patented to them on a f and just basis, with such limitations and restrictions as to alienation, incumbran and so forth, as will prevent the disposal thereof of more than one-fourth the f year, one-fourth after the expiration of five years, and with the right to rece title in fee simple for the remainder after the expiration of ten years.

The right of the United States to locate the Chickasaw freedmen on the land the "leased district" has been fully set forth in this paper.

Such disposition of the lands of the "leased district," or what remains the undisposed of, will serve double purpose of adjusting the Chickasaw freedi problem, and at the same time dispose of a large part, if not the whole, of remainder of the claim of the Choctaw and Chickasaw nations for additional co pensation for said lands.

Finally, we beseech your Commission to consider our case carefully, and mat

and put in form some measure for adoption by Congress that will extricate us from our present deplorable and distressed situation, a condition worse than slavery, in which we have been compelled so long to remain, without proper effort for our relief, or remedy for our wrongs.

We hope that your Commission will use the opportunity, while present in the Indian Territory, to acquaint yourselves with all the facts necessary to a full understanding of our claims, our needs, and of the remedies and the measures of relief that right, justice, and equity require to be provided, in order to correct, as far as it can possibly be done at this time, the evils, wrongs, and great injustice under which we have been so long, and are yet, existing.

We hold ourselves in readiness to respond to any demands your Commission may make upon us for facts, information, suggestions, or otherwise, so far as it may be in our power to comply therewith.

Very respectfully, your obedient servants,

CHAS. COHEN,
ISAAC C. KEMP,
GEO. W. HALL,
MACK STEVESON,
Committee of the Chickasaw Freedmen's Association.

R. V. BELT, *1214 Tenth street NW., Washington, D. C.,*
J. P. MULLEN, *Fort Smith, Ark.,*
Attorneys and Counselors for the Chickasaw Freedmen's Association.

54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 183.

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1896.—Ordered to be printed.

Mr. COCKRELL presented the following

COPIES OF CORRESPONDENCE BETWEEN THE SECRETARY OF THE TREASURY, MR. H. McCULLOCH, AND THE ASSISTANT TREASURER AT NEW YORK, MR. THOMAS C. ACTON, JANUARY, 1885, RELATIVE TO THE PAYMENTS TO BE MADE THROUGH THE CLEARING HOUSE, WHETHER IN GOLD OR SILVER DOLLARS, OR REPRESENTATIVE CERTIFICATES.

OFFICE OF ASSISTANT TREASURER UNITED STATES,
New York, January 24, 1885.

SIR: I beg to call your attention to the last report of the Treasurer of the United States, and more particularly to that portion of it on pages 20 and 21 which relates to "Clearing-house transactions."

The Treasurer says under certain contingencies "the question must soon arise for the decision of the Department as to whether it will continue to make in gold or its representative the payments now made through the clearing house, or use in its payments the silver dollars or their representative certificates, etc."

Without meaning to say that the question referred to now presses for immediate decision, I desire to call your attention to it again.

The public are uneasy about it, and it is being discussed here.

The gold reserve has been running down rapidly for some time, while there has been little or no exportation. It is true that the reserve is not yet so low as on the 12th of August last, but then the heavy exports easily accounted for the diminution. Now there seem to be signs of gold hoarding.

In addition to this, I am informed this morning that holders of silver certificates have been unable in some bona fide cases to dispose of them in this city at par, and have actually been compelled to submit to a discount.

This city is practically the only place in the United States where the attempt is made to continue the gold basis (chiefly through the agency of the clearing house), and the position is such now as to cause some slight embarrassment to be felt in doing business with other places, and particularly with Boston.

Very respectfully,

THOS. C. ACTON,
Assistant Treasurer.

Hon. HUGH McCULLOCH,
Secretary of the Treasury.

JANUARY 26, 1885.

SIR: Your letter of the 23d instant has been received. I fully appreciate, as you know, the gravity of our financial condition, the danger which threatens the country by reason of the continued coinage of silver; but we must be careful not to do anything which will precipitate a crisis. Having given the subject presented by your letter careful attention my conclusion is that we should not at present make any change in our policy; that we should supply as far as we can the assistant treasurers in our large commercial cities with legal-tender notes to be used with gold and silver certificates in their disbursements; that while the last named should not be forced upon the Government creditors they should be used in such manner and to such an extent in making payments as will tend to prevent their depreciation and thereby, at least, defer, as long as may be possible, silver dollars from becoming the practical standard of value.

I shall write to the president of the New York clearing house and call his attention to the act of Congress of July, 1882, and to the noncompliance by the clearing house with the provisions of that act and with its own resolutions of conformity thereto. All clearing houses must stand upon the same footing. If neither silver nor silver certificates can be used in settling balances in the clearing house in New York, it is unreasonable to expect a compliance with the act referred to in other cities. I shall await the answer to my letter to the New York clearing house with some anxiety. In the meantime, and until we find that the gold reserve of the Treasury is trenched upon to such an extent as will be likely to bring the requirements of the resumption law into practical operation, it is, I conceive, your duty and mine to pursue our present policy—doing what we can under existing laws to maintain the credit of silver. You will, as far as practicable, supply the assistant treasurers outside of New York with legal tenders.

I am, very truly, yours,

H. MCCULLOCH, *Secretary.*

Hon. A. U. WYMAN,
United States Treasurer.

P. S.—Upon reflection I have come to the conclusion that it is advisable that you should request the assistant treasurer at New York to come to Washington in order that we may have a free conference upon the subject of the foregoing. This, of course, will obviate the necessity of my writing to him, as I expressed my intention to do.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 184.

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1896.—Ordered to be printed.

Mr. COCKRELL presented the following

LETTER OF THE SECRETARY OF THE TREASURY, DATED JANUARY 16, 1896, ADDRESSED TO HIM, RELATIVE TO THE AMOUNT OF SILVER BULLION NOW ON HAND, THE COST OF THE SAME, AND THE COINAGE VALUE IF COINED INTO DOLLARS, AND THE AMOUNT OF SEIGNIORAGE IF SO COINED, ETC.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., January 16, 1896.

SIR: In reply to your inquiries of the 14th instant, I have to submit the following:

(1) Aggregate amount of silver bullion purchased under the laws of July 14, 1890, in ounces; the cost of the same in Treasury notes, and the coinage value of the same if coined into dollars, and the amount of the seigniorage?

Answer:

Amount of silver bullion purchased.....fine ounces..	168, 674, 682. 53
Cost in Treasury notes	$155, 931, 002. 25
Coinage value in silver dollars	218, 084, 438. 00
Seigniorage on same if coined	62, 153, 435. 75

(2) The aggregate amount of such silver bullion now on hand, in ounces; the cost of the same in dollars and cents, and the coinage value of the same if coined into dollars, and the amount of seigniorage if so coined?

Answer:

Amount of silver bullion on hand January 1, 1896.....fine ounces..	137, 639, 299. 36
Cost in Treasury notes	$124, 076, 707. 25
Coinage value in silver dollars	177, 957, 882. 00
Seigniorage on same if coined	53, 881, 174. 75

(3) The total amount of such bullion coined up to January 1, 1896, in ounces; the cost of the same; the amount so coined in dollars and cents, and the amount of seigniorage thereon?

Answer:

Amount of silver bullion used in coinage to January 1, 1896, fine ounces	30, 971, 812. 80
Cost of the same	$31, 791, 759. 36
Number of silver dollars coined	40, 044, 364. 00
Seigniorage on same	8, 252, 604. 64

(4) The total amount of such bullion, in ounces, coined prior to March 1, 1893; the cost of the same; the amount so coined in dollars and cents, and the amount of the seigniorage thereon?

Answer:

Amount of silver bullion used in coinage prior to March 1, 1893, fine ounces	27, 582, 111. 56
Cost of the same	$28, 826, 659. 66
Silver dollars coined prior to March 1, 1893	35, 661, 720. 00
Seigniorage on same	6, 835, 060. 34

(5) The amount of such bullion, in ounces, coined since March 1, 1893, to January 1, 1896; the cost of the same; the amount in dollars and cents so coined, and the amount of the seigniorage thereon?

Answer:

Amount of silver bullion used in coinage from March 1, 1893, to January 1, 1896 ..... fine ounces	3,389,701.22
Cost of same	$2,965,099.64
Silver dollars coined from March 1, 1893, to January 1, 1896	4,382,644.00
Seigniorage on same	1,417,544.36

(6) The total amount of the Treasury notes issued in the purchase of the bullion now outstanding and the amount of such notes redeemed in silver and canceled prior to March 4, 1893, and the amount so redeemed and canceled since March 4, 1893?

Answer:

Treasury notes now outstanding	$137,538,280
Amount of such redeemed prior to March 4, 1893	None.
Amount of such redeemed since March 4, 1893	18,392,722

(7) The amount of such Treasury notes redeemed in gold prior to March 4, 1893, giving date and place of the first redemption of such notes in gold?

Answer:

Treasury notes redeemed in gold prior to March 1, 1893	$94,138,473

Date and place of first redemption, October 14, 1891; Boston.

(8) The amount of such Treasury notes redeemed in gold since March 4, 1893, and the principal places at which so redeemed?

Answer. Treasury notes redeemed in gold from March 1, 1893, to December 31, 1895:

At Washington	$85,362
At Baltimore	309,812
At New York	25,182,016
At Philadelphia	5,292,448
At Boston	10,631,221
At Cincinnati	23,580
At Chicago	263,680
At St. Louis	376,164
At New Orleans	445,660
At San Francisco	444,650
Total	43,054,593

(9) The amount of standard silver dollars and silver certificates exchanged for gold or paper redeemable in gold, from October 17, 1893—the date of Secretary Carlisle's letter to "The President of the Senate, Senate Doc. No. 29, Fifty-third Congress, first session;" Coinage Laws, p. 328—up to January 1, 1896?

Answer. Gold coin and gold certificates received at the offices of the Treasury in exchange for other kinds of money, from July 1, 1893, to December 31, 1895:

For national-bank notes	$36,890
For United States notes	53,023,615
For Treasury notes	7,808,317
For silver certificates	10,000,710
For standard silver dollars	1,529,668
For fractional silver coin	6,983,284
For minor coin	126,961
Total	69,509,445

(10) Whether any Treasury Department Circular has been issued since *January, 1885,* inviting, or directly authorizing, the exchange of silver

dollars and silver certificates for gold or paper redeemable in gold, and, if so, copy of such circular or circulars.

Answer. Inclosed herewith, Department Circular No. 162, covering the issue and redemption of currency.

Very respectfully,

J. G. CARLISLE,
Secretary.

Hon. F. M. COCKRELL,
United States Senate.

TREASURY DEPARTMENT, *March 6, 1896.*

Hon. F. M. COCKRELL:

Number of silver dollars coined from January 1 to March 1, 1896, 1,500,000, and total amount of Treasury notes redeemed in silver dollars and canceled to date, $19,387,722.

R. E. PRESTON,
Director of the Mint.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 185.

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1896.—Ordered to be printed.

Mr. COCKRELL presented the following

LETTER FROM THE ACTING DIRECTOR OF THE MINT TRANSMITTING STATEMENT OF THE COINAGE OF GOLD AND SILVER OF FRANCE FROM 1795 TO 1874, INCLUSIVE.

TREASURY DEPARTMENT,
BUREAU OF THE MINT,
Washington, D. C., January 23, 1896.

SIR: Herewith inclosed please find the coinage of gold and silver of France in detail from 1795 to 1874, inclusive.

I regret that the records of the Bureau do not go further back than the first year.

Respectfully, yours,

B. F. BUTLER,
Acting Director of the Mint.

Hon. F. M. COCKRELL.
United States Senate.

Coinage of France in both gold and silver from 1795 to 1874, inclusive.

Years.	Gold.	Silver.	
		5-franc pieces.	Divisional silver.
	Francs.	*Francs.*	*Francs.*
IV and V		41,399,385	
VI		11,917,300	
VII		18,979,705	
VIII		12,852,230	
IX		3,816,595	
X		4,842,785	
XI		11,429,255	
1803	10,209,840	22,827,000	344,998
1804	38,463,980	42,303,315	5,213,881
1805	20,474,500	39,181,990	7,203,919
1806	38,533,760	22,428,245	2,813,407
1807	18,019,920	4,022,115	986,788
1808	32,311,260	46,911,430	20,922,492
1809	15,206,440	39,927,225	4,369,269
1810	46,070,600	51,722,400	5,447,816
1811	132,135,740	244,787,480	11,661,560
1812	97,717,880	155,228,065	5,558,344
1813	62,659,680	120,014,265	4,896,048
1814	64,544,720	60,788,535	455,586
1815	55,379,840	37,660,240	13,566
1816	15,151,280	34,183,345	735,181
1817	52,197,080	35,044,790	2,086,789
1818	95,410,460	12,009,695	306,382
1819	52,410,660	20,944,005	201,072
1820	28,781,080	18,061,460	375,160
1821	404,140	66,775,910	757,956
1822	4,718,100	96,441,395	2,231,743
1823	406,120	20,949,760	2,010,995

Coinage of France in both gold and silver from 1795 to 1874, inclusive—Continued.

Years.	Gold.	Silver.	
		5-franc pieces.	Divisional silver.
	Francs.	*Francs.*	*Francs.*
1824	7,071,700	111,572,835	2,903,173
1825	45,616,360	72,869,470	2,333,821
1826	925,540	88,732,310	2,103,313
1827	3,160,940	149,580,405	4,288,573
1828	8,025,740	157,130,665	4,335,469
1829	1,118,180	99,645,450	2,997,167
1830	23,516,640	118,696,115	1,490,975
1831	49,641,380	203,292,395	1,931,369
1832	2,046,280	134,305,315	7,048,600
1833	16,799,780	154,425,595	2,057,268
1834	30,231,200	211,534,020	6,754,364
1835	4,550,060	95,811,105	2,855,944
1836	5,097,040	41,518,825	1,722,574
1837	2,026,740	109,202,540	2,656,158
1838	4,949,149	86,240,080	2,249,244
1839	20,670,000	71,538,785	2,098,957
1840	40,998,240	61,305,885	2,489,642
1841	12,375,060	73,299,680	4,218,261
1842	1,852,720	65,879,910	2,511,260
1843	2,826,600	71,858,950	2,290,049
1844	2,742,260	66,975,560	2,159,420
1845	119,140	83,905,290	6,064,319
1846	2,086,420	42,211,015	5,675,131
1847	7,706,020	71,610,030	6,675,127
1848	39,697,740	119,052,945	678,150
1849	27,109,560	208,881,545	2,717,119
1850	85,192,390	80,603,390	5,855,095
1851	269,709,570	57,496,450	1,830,950
1852	27,028,270	69,951,000	1,967,445
1853	312,964,020	19,458,160	641,328
1854	526,528,200	53,075	2,070,812
1855	447,427,920	24,305,965	1,194,441
1856	508,281,995	45,777,405	8,644,809
1857	572,561,225	467,030	3,342,581
1858	488,689,655	133,950	8,529,619
1859	702,697,790	16,825	8,384,968
1860	439,452,425	.....	8,084,199
1861	98,216,400	110,490	2,407,559
1862	214,241,990	105,645	2,413,753
1863	210,230,640	108,435	221,175
1864	273,843,765	160,840	7,135,770
1865	161,886,885	495,670	8,736,724
1866	365,082,925	189,465	44,631,944
1867	198,579,510	54,051,560	59,766,980
1868	340,076,685	93,620,550	35,824,718
1869	234,186,190	58,264,285	9,911,612
1870	55,394,800	53,648,350	15,402,906
1871	50,169,880	4,710,905	19,167,594
1872	.....	389,190	26,449,180
1873	.....	154,649,045	1,621,115
1874	24,319,700	59,996,010	613,979
Total	7,839,923,260	4,914,569,220	451,347,719
Value in United States dollars	1,513,105,189	948,511,859	87,110,110

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 186.

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1896.—Referred to the Committee on Commerce and ordered to be printed

Mr. GORDON presented the following

MEMORIAL FROM THE PILOTS OF SAVANNAH, GA., PROTESTING AGAINST THE PASSAGE OF H. R. 2673, WHICH REPEALS THE COMPULSORY PILOTAGE LAW SO FAR AS IT RELATES TO COASTWISE VESSELS; ALSO EDITORIAL FROM THE SAVANNAH MORNING NEWS OF FEBRUARY 6, 1896, ON THE "DINGLEY PILOTAGE BILL."

MARCH 20, 1896.

DEAR SIR: We are advised by telegram that House bill No. 2673, which was referred to the Committee on the Merchant Marine and Fisheries, has been reported upon favorably by the majority of said committee.

This bill virtually nullifies the State laws in regard to pilotage, and means the destruction of the present system. Its enactment will work great injury to the smaller ports, which depend largely upon coastwise commerce for the maintenance of their pilotage system, by which vessels are enabled to enter such ports safely. The bill is also unjust to the State pilots who, under the laws of Georgia, have served long apprenticeships in order to become proficient in their profession.

Protests against the passage of this bill were forwarded some time since to the committee in charge of it from the commercial bodies of this and other cities, but it seems to have had no effect. We therefore beg leave to ask your active assistance in preventing a law being passed which will not only work great hardships upon us personally, but which will be disastrous to the commerce of this port.

The late Hon. A. H. Stephens, after a thorough investigation of this question when it was first agitated, said, "Congress has nothing to do with the matter; it has as much right to regulate the police system as it has to do so. Pilots are the officers of the State and its sanitary guardians."

We understand the bill will be called up on Wednesday or Thursday and ask your active efforts to prevent its passage.

Yours, respectfully,

SAVANNAH PILOTS,
By THOS. M. FLEETWOOD,
Secretary.

Hon. JOHN B. GORDON,
Senate, Washington, D. C.

[From the Morning News, Savannah, Ga., February 6, 1896.]

THE DINGLEY PILOTAGE BILL.

Representative Dingley a few years ago succeeded in having a bill passed by Congress relieving coastwise vessels of all custom-house dues. This was done on the plea of helping to build up American com-

merce. This law took from the revenue of the Government something like $8,000,000 annually and added it to the already large dividends of New England.

The people of other sections of the country, especially those on the South Atlantic and Gulf coasts, had previously been paying tribute to New England through the monopoly given to their ships by the law prohibiting foreign vessels from engaging in coastwise trade. The abolition of custom-house dues on their vessels was another indirect tax upon the rest of the country for the benefit of the never-satisfied demands of New England for something out of the public Treasury.

Not satisfied with a monopoly in trade and exemptions from custom dues, the shipowners and shipbuilders of that favored people are now asking Congress to abolish State pilotage, so that the charge for maintaining pilots at ports of entry in other States will either have to be paid entirely by foreign vessels or by a direct tax levied upon the people of commercial cities, or if that is not done, the foreign trade will have to be wholly carried on through Northern ports, and goods for Southern ports will have to be reshipped south in coastwise vessels, as foreign ships would not risk the dangers of a coast where there are no pilots to guide them into port.

It is urged by Mr. Dingley and others who favor abolishing what they call "compulsory pilotage" that it will help American commerce. If these gentlemen want to help American commerce why don't they abolish the laws prohibiting the use of foreign vessels in coastwise trade, and also the law which prohibits Americans from buying or building ships in foreign countries?

The pilotage system has been considered of such great importance to the welfare of commerce in every civilized country that it is placed under Government control. The State of Georgia, for instance, has most exacting laws on the subject. The statute limits the numbers of pilots for the port of Savannah to about 20 men, and requires that pilots shall serve eight years before they undertake to navigate the larger vessels into port. Furthermore, under the law, pilots are placed under bonds for the faithful performance of their duties, and are required to conform to certain stringent regulations, which are enforced by a board of pilot commissioners.

The effect of the Dingley bill, if it should become a law, would be, practically, to abolish all State pilotage regulations, and this would be done in the interest of the New England fleet, which comprises about all the coastwise vessels that are now subject to the pilotage laws. The foreign vessels would not furnish sufficient employment for the pilots, and, besides, it is very probable that foreign nations would demand that their ships should be put on as favorable a footing as is occupied by American vessels. Foreign vessels would insist upon having the privilege of taking a pilot or not. If a pilotage system was maintained it would have to be at the expense of the ports.

New England shipowners have a monopoly of the coastwise trade, and New England shipbuilders monopolize the shipbuilding business. The New England shipowners have the benefit of the custom-houses which other sections are taxed to maintain. Besides these advantages, the New England fishermen have had millions of dollars in fishery bounties, and it has not been so many years since the United States paid $5,500,000 to England as damages for depredations committed on British fisheries by New England fishermen. And still the thrifty people whom Mr. Dingley represents are not satisfied, but, like Oliver *Twist*, cry for more.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 187.

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1896.—Laid on the table and ordered to the printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ACTING SECRETARY OF THE INTERIOR, TRANSMITTING, IN RESPONSE TO SENATE RESOLUTION OF MARCH 16, A COPY OF LETTER FROM THE DIRECTOR OF THE GEOLOGICAL SURVEY RELATIVE TO "GAUGING THE STREAMS AND DETERMINING THE WATER SUPPLY OF THE UNITED STATES, INCLUDING THE INVESTIGATION OF UNDERGROUND CURRENTS AND ARTESIAN WELLS IN ARID AND SEMIARID SECTIONS."

DEPARTMENT OF THE INTERIOR,
Washington, March 23, 1896.

SIR: I am in receipt of Senate resolution of the 16th instant:

That the Secretary of the Interior be, and hereby is, directed to transmit to the Senate a statement of the investigation by the Geological Survey now in progress under the clause in the appropriation act approved March 2, 1895, "for gauging the streams and determining the water supply of the United States," etc., and also of the reports now in preparation showing the results of the work. And he is further directed to state whether the information being obtained bears upon the methods of utilizing the water resources, and whether it is practicable to prepare, in connection with the determinations of the water supply, popular reports or bulletins showing the best methods of such utilization.

In response thereto I transmit herewith a copy of a letter from the Director of the Geological Survey, to whom the resolution was referred, which contains the information desired.

As regards so much of the resolution as requires me to state whether the information being obtained by the survey bears upon the methods of utilizing the water resources, I have the honor to answer in the affirmative; and as to whether it is practicable to prepare, in connection with the determinations of the water supply, popular reports or bulletins showing the methods of illustration, to state that I concur in the conclusions of the Director of the Survey that it will be practicable to do so, provided there is a material increase in the appropriation over that granted for the current fiscal year.

Very respectfully,

JNO. M. REYNOLDS,
Acting Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
UNITED STATES GEOLOGICAL SURVEY,
Washington, D. C., March 20, 1896.

SIR: Complying with your instructions of March 17, 1896, I have the honor to submit the following report in reference to Senate resolution of March 16, 1896, which reads as follows:

Resolved, That the Secretary of the Interior be, and hereby is, directed to transmit to the Senate a statement of the investigations by the Geological Survey now in progress under the clause in the appropriation act approved March 2, 1895, "for gauging the streams and determining the water supply of the United States," etc., and also of the reports now in preparation showing the results of the work. And he is further directed to state whether the information being obtained bears upon the methods of utilizing the water resources, and whether it is practicable to prepare, in connection with the determinations of the water supply, popular reports or bulletins showing the best methods of such utilization.

Attest: WM. R. COX, *Secretary*.

The clause of the appropriation act to which this refers is in these words:

For gauging the streams and determining the water supply of the United States, including the investigation of underground currents and artesian wells in arid and semiarid sections, $20,000.

The amount appropriated by this section of the act, $20,000, covers all salaries and incidental expenses of the investigation referred to up to the time the report of results is completed and submitted for publication. Out of this sum, therefore, must be paid all expenses connected with the office work and correspondence growing out of such investigation and with the diffusion of the results, as well as the general supervision of the work in the field.

This work is conducted under what is known as the Division of Hydrography. What may be called the permanent force of this division consists of the chief and two skilled assistants, who spend most of their time in the field, and two clerks, one a stenographer, the other a computer. The chief of the division has general supervision, and attends to the correspondence and to the preparation of material for publication. The two skilled assistants are in the field almost continuously, traveling from point to point, inspecting the work, and lending aid to the resident assistants occasionally employed. The total expense of this force of five persons is, in round numbers, from $10,000 to $11,000 per year. This expenditure may be considered a constant necessity, whether the amount devoted to field work be what it now is or two or three times as great. Within certain limits, there is about the same amount of supervision and of correspondence to be provided for, irrespective of the field work.

INVESTIGATIONS IN PROGRESS.

The investigation as defined in the appropriation act consists of two distinct yet related classes of field work. (1) The first consists of the measurement of the streams. This necessitates operations carried on at intervals through several years and at widely separated points. (2) The second is the investigation of underground currents and artesian wells. This, to be efficient, requires close detailed study of contiguous areas and a thorough knowledge of the structure of the country. The first partakes more of the nature of engineering, the second of geologic surveying. The allotment for field work has been divided between these two classes, the smaller amount being allotted to the investigation of subsurface waters, the larger to the measurement of streams.

In round numbers, about $3,000 has been spent during the past year in field work connected with the examination of artesian and other wells, and about $6,000 in field work connected with stream measurements. This latter does not include the work done by the regular assistants mentioned above.

This $6,000 for field expenses is distributed through twenty different States. This distribution is by no means uniform, because of the fact that in some of the States the needs are more pressing than in others, and because larger results can be obtained with less outlay in certain localities than in others. It is apparent at a glance, however, that the amount of work which can be accomplished in each State is extremely unsatisfactory to the persons who are deeply interested in the development of their respective localities.

The following list gives the places at which stream measurements have been or are being made. At those places marked with an asterisk (*) the work has been done in whole or in part at the expense of individuals or corporations. The list is arranged in geographic order, beginning with the head waters of the Missouri in Montana, then going southerly to the Rio Grande, Interior Basin, Columbia, Pacific Coast drainage, and ending with the rivers of the Atlantic Slope, Appalachian area, and Gulf drainage.

List of rivers measured.

River.	State.
Upper Missouri basin:	
West Gallatin River at Salesville	Montana.
Middle Creek above Bozeman	Do.
Gallatin River at Logan	Do.
Madison River at Three Forks	Do.
Jefferson River at Sappington	Do.
Missouri River at Townsend	Do.
Big Goose Creek at Sheridan	Wyoming.
Platte basin:	
Laramie River at Woods Landing	Wyoming.
Laramie River at Uva	Do.
North Platte River at Orin	Do.
North Platte River at North Platte	Nebraska.
South Platte River at Deansbury*	Colorado.
South Platte River at Denver*	Do.
Bear Creek at Morrison*	Do.
South Boulder Creek at Marshall*	Do.
Boulder Creek at Boulder*	Do.
St. Vrain Creek at Lyons*	Do.
North Loup River at St. Paul	Nebraska.
Middle Loup River at St. Paul	Do.
Loup River at Columbus	Do.
Platte River at Columbus	Do.
Salt Creek at Lincoln	Do.
Kansas basin:	
North Fork of Republican River at Benkelman	Nebraska.
South Fork of Republican River at Benkelman	Do.
Frenchman River at Wauneta	Do.
Frenchman River at Palisade	Do.
Republican River at Junction City	Kansas.
Solomon River at Beloit	Do.
Saline River at Beverly	Do.
Smoky Hill River at Ellsworth	Do.
Blue River at Manhattan	Do.
Kansas River at Lawrence	Do.
Arkansas basin:	
Arkansas River at Granite	Colorado.
Arkansas River at Salida	Do.
Arkansas River at Canyon	Do.
Arkansas River at Pueblo	Do.
Arkansas River at La Junta	Do.
Arkansas River at Holly	Do.
Arkansas River at Hutchinson	Do.
Verdegris River at Liberty	Kansas.
Neosho River at Iola	Do.
Medicine River at Kiowa	Do.
Cimarron River at Arkalon	Do.
Mora River at Watrous	New Mexico.

List of rivers measured—Continued.

River.	State.
Rio Grande basin:	
Rio Grande at Del Norte	New Mexico.
Rio Grande at Alamosa	Do.
Rio Grande at Embudo	Do.
Chame River at Abiquiu	Do.
Rio Grande at Rio Grande	Do.
Rio Grande at San Marcial	Do.
Rio Grande at El Paso	Texas.
Colorado basin:	
Grand River at Grand Junction	Colorado.
Uncompahgre River at Fort Crawford	Do.
Gunnison River at Fort Crawford	Do.
Grand River at Grand Junction	Do.
Dolores River at Dolores	Do.
San Miguel River at Seymour	Do.
San Juan River at Arboles	Do.
Piedra River at Arboles	Do.
Animas River at Durango	Do.
Green River at Green River	Wyoming.
White River at White River	Colorado.
Green River at Blake	Utah.
Gila River at Buttes	Arizona.
Colorado River at Yuma	Do.
Interior basin:	
Truckee River at Tahoe	Nevada.
Carson River at Empire	Do.
Walker River at Nordyke	Do.
Humboldt River at Elko	Do.
Humboldt River at Golconda	Do.
Humboldt River at Oreana	Do.
Bear River at Battle Creek	Idaho.
Bear River at Collinson	Utah.
Ogden River at Ogden	Do.
Weber River at Uinta	Do.
Provo River at Provo	Do.
Columbia basin:	
Boise River at Boise	Idaho.
Boise River at Caldwell	Do.
Payette River at Payette	Do.
Weiser River at Weiser	Do.
Bruneau River at Grand View*	Do.
Snake River at Montgomery Ferry	Do.
Owyhee River at Nyssa	Oregon.
Malheur River at Vale	Do.
Naches River at North Yakima	Washington.
Yakima River at Union Gap	Do.
Topinish Creek at Topinish	Do.
Satas River at Satas	Do.
Yakima River at Kiona	Do.
Sacramento and San Joaquin basin:	California.
Sacramento River at Red Bluff	Do.
Port Tejon Creek*	Do.
Salt and San Emidio creeks*	Do.
Pastoria Creek*	Do.
Tunis Creek*	Do.
Tejon House Creek at Tejon House	Do.
Rancheria Creek*	Do.
Caliente Creek*	Do.
Kern River above Bakersfield*	Do.
Kings River at Kingsburg	Do.
Kings River at Red Mountain	Do.
San Joaquin River at Herndon	Do.
Fresno River	Do.
Merced River	Do.
Tuolumne River at Modesto	Do.
Tuolumne River at Lagrange	Do.
Stanislaus River at Oakdale	Do.
Mokelumne River at Lodi	Do.
Southern California streams:	
San Gabriel River at Azusa	California.
Mohave River	Do.
White Water River*	Do.
Santa Ana River*	Do.
San Luis Rey River*	Do.
Sweetwater River*	Do.
Potomac basin:	
South branch of Shenandoah River at Springfield	West Virginia.
Potomac River at Cumberland	Maryland.
Potomac River at Great Cacapon	West Virginia.
North and South rivers at Port Republic	Virginia.
Shenandoah River at Millville	West Virginia.
Potomac River at Point of Rocks	Maryland.
Potomac River at Chain Bridge	Dist. of Columbia.

List of rivers measured—Continued.

River.	State.
James River basin:	
North River at Glasgow	Virginia.
James River at Buchanan	Do.
Eastern North Carolina rivers:	
Dan and Staunton rivers at Clarksville	Virginia.
Cape Fear River at Fayetteville	North Carolina.
Yadkin River at Holtsburg	Do.
Catawba River at Fort Mill	Do.
Georgia rivers:	
Ocmulgee River at Macon	
Chattahoochee River at Oakdale	
Ohio River tributaries:	
Greenbrier River at Alderson	West Virginia.
New River at Fayette	Do.
French Broad River at Ashville	North Carolina.
Texas rivers (reconnoissance):	
Colorado River at Austin	
San Marcos Spring	
Comal River	
San Antonio and San Pedro springs	
Sabinal River	
Leona River	
San Moras Spring	
San Felipe Springs	

In the mountain States the measurements of streams are comparatively simple, from the fact that the channel does not greatly change and nearly all the water flows upon the surface. In Kansas, Nebraska, and other States of the Great Plains region the channels of the streams change rapidly from time to time, and besides this, much of the water sinks beneath the surface. It is therefore by no means a simple problem to determine the amount of water available, and experience has shown that for accuracy of results it is necessary to go to a little more trouble and expense than has been done in the past. It is therefore probable that with the present appropriation it will be advisable to cut down the number of river stations and concentrate efforts upon a less number of places, in order that various phenomena may be more thoroughly investigated.

The large amount of work accomplished with this comparatively small appropriation has resulted from the method of organizing and carrying on the field investigation. The results are such that general interest has been displayed in all parts of the country, and many persons have been induced to cooperate in order to push forward this important undertaking. The attempt has been made to secure, as far as possible, the assistance of professional men in each State and Territory, who, from their occupation and natural inclinations, have deep interest in obtaining results. Wherever possible the local oversight and conduct of the work has been placed in their hands. These gentlemen are paid a moderate compensation for the time actually employed, and in a number of instances a considerable amount of work has been done for which no payment has been made. In this way the list of salaried men has been reduced to the minimum. Assistance has also been sought from transportation companies, and in many instances this was cheerfully given at the outset of the work. As progress is made, however, there is a tendency for the railroad companies to offer fewer facilities, for with financial depression, change of management, and necessity of extreme economy the managers of these companies are less concerned in such general matters. Any investigation of this kind, while first received with considerable enthusiasm, is apt to be looked upon soon

as an established thing, and while the results are appreciated and utilized the friends of the work are inclined to become less enthusiastic and less strenuous in their exertions. Thus it happens that the Survey is now obliged to assume expenses for facilities which at first were freely offered, but which later were withheld through indifference or on account of the trouble and expense involved.

The question of water supply from wells is for a great portion of the West more important than that of the quantity of surface waters. Individuals and associations are spending thousands of dollars in experiments to obtain water in places where it is apparent to geologists that none can be had. Other desirable localities have been overlooked through ignorance of the true conditions. The investigation of such matters, as stated above, is a complicated one, and requires careful field work, directed by able geologists. To obtain results of value it is not practicable to distribute this work over large areas, and therefore the investigation has been begun at certain points with the intention of expanding from these as rapidly as circumstances permit. For example, beginning in the vicinity of Pueblo, Colo., where the rocks of the plains are upturned and accessible to detailed study, work has been begun and carried on easterly down the Arkansas Valley into western Kansas. The underground structure of this region has been mapped and data have been acquired from which to predict the depth beneath the surface and the slope of the water-bearing strata. The generalizations of the geologists employed in this work have been verified by recent borings, and communities within this area have been assured of an unfailing supply of pure water, adding materially to their prosperity. Work has also been begun in the Dakotas, and is now being carried on in Texas, where the examinations are bringing out results which can not fail to be of very great value in the future of that State. Comparatively little beyond preliminary reconnoissances has been done at other points on the Great Plains, and I do not deem it wise to attempt to diffuse this work with the present appropriation, since accuracy of detail is all important.

In the East some work is being done in the way of determining the water supply for water powers, and although the time has been short, great attention has been attracted by these investigations because of the fact that the few measurements made have shown the feasibility of one or two large enterprises which have been held in abeyance or dropped for lack of just such facts. Requests are made to continue and expand this work and to obtain general information concerning the probabilities of the existence of deep-seated water suitable for domestic purposes at points where now the surface waters are so polluted that various forms of fevers are prevalent. Pressure comes from the West for more facts concerning the flow of the streams; from the Great Plains for more details concerning the probability of obtaining water from wells; from the East for figures as to water power; from the coast regions for data concerning the deep-seated waters. The difficulty of apportioning the sum allotted for field work fairly among all of these interests is very great. This is illustrated by the demands made from various parts of the country, a few of which are herewith given in condensed form.

From the State of California numerous appeals have been received for extension of the work within the State and for a more equitable allotment, in view of the great extent of territory and the wide variation in topographic and climatic conditions. On February 25, 1896, the Engineers' and Architects' Association of Southern California passed

a resolution urging that the hydrographic work of the Geological Survey be continued and extended, especially during the present season of minimum rainfall. A comparison is drawn between this and other States, and it is noted that the estimate for expenditures in that State for the measurement of streams and the investigation of artesian and underground sources of water supply is no greater than that for Wyoming. The resolution declares that "California, which is the largest, wealthiest, and most populous State, where water is more used and more valuable, where there are more irrigators, greater area irrigated, more valuable products per acre, where a greater number of artesian wells are in use than in any other of the arid States, is put on an equality with Wyoming as regards this work."

On the other hand, on behalf of the State of Wyoming it is urged that here, with undeveloped resources and vast bodies of land still in the hands of the National Government, there is the most pressing necessity for exact information through which alone the requisite data for the construction of irrigation and water-power works can be acquired.

From the Territory of New Mexico come protests that the allotment for work there is too small, being little more than sufficient to pay the necessary observers at points along the Rio Grande, leaving nothing for field work. The amount assigned for this Territory can accomplish little in comparison to what should be done, considering the extreme importance of the Rio Grande and of other streams. New Mexico should receive at least $2,500, this being exceedingly small in view of the needs and interests concerned.

A correspondent from Georgia presents strongly the necessity of increasing work in that and neighboring States. He cites as one of the many instances of the imperative need of better information the failure of an important project because of what he considers as misinformation given out by the Government. The Tenth Census of the United States brought together and published all of the data available concerning water powers, and from these certain conclusions were drawn unfavorable to the South. These conclusions he shows are not warranted by present knowledge, but being official have led to disastrous results. These are given in the following paragraphs:

One of the most prominent hydrographic engineers of the United States, doubtless influenced by the conclusions of the census report on the water powers, made the remarkable statement that the Chattahoochee River, opposite Atlanta, "may at time of low water go down to a quantity as low as 186 cubic feet per second, or less than 75 net horsepower for a 5-foot shoal." Basing an opinion upon this and similar statements, the investigators of the proposed Chattahoochee Electric Power Plant finally concluded not to construct the works when the enterprise was brought to the point of decision. At that time, the early part of 1895, there was no opportunity to ascertain the low-water flow of the river, and thus this great enterprise was lost to the people of that section. The question is asked, "Is there any wonder that a prospective investor, having these statements before him, should demand Government statistics, and failing to find these, should withdraw?"

Late measurements by the Division of Hydrography have shown that in October, 1895, when the streams of the country were at their minimum stage, the Chattahoochee, opposite Atlanta, measured 1,096 cubic feet per second, or six times that of the estimated low-water flow. There has been too much guesswork as to low-water volume all over the United States, and this investigation by the Division of Hydrography of the Geological Survey is the only means now available of arriving at the exact truth. It has accomplished a greater work in proportion to the money expended than any other division of the Government surveys. The material interests dependent upon its proper execution are enormous. There is no one thing more important than a thorough knowledge of the water supply, and there is no subject upon which there is more popular ignorance. All the great questions of irrigation, drainage, water power, mining, manufacturing, drinking water, sewerage, etc., depend upon a proper investigation of the quantity and quality of the water flowing *in our streams and the amount* available from underground sources. But for

the hearty cooperation of institutions and individuals without compensation the Survey could not have accomplished the good that it has. The people are interested in this work and appreciate it, and they believe that for uniformity of methods and impartiality in results the work should be conducted by the General Government. So far as the South is concerned, they need it more than any other part of the country, for there is a pressing demand upon the outside world for reliable information concerning these resources. Georgia needs more investigations as to her streams and her artesian underground waters than any State in the Union.

REPORTS IN PREPARATION.

Two series of reports, covering the two branches of the work above named, are in preparation or in the hands of the printer. The first is the technical description of the results of the river measurements. This will be issued as Bulletin No. 140, its form and contents being similar to those of Bulletin No. 131, which gives the report of progress of the Division of Hydrography for 1893 and 1894. Bulletin No. 140 is considerably larger, and gives all of the results obtained for the calendar year 1895. It is printed without illustrations and in small edition, as the facts and figures are given in considerable detail and have immediate use mainly for the relatively few people who are concerned with the details of water supply. The object of printing in this form is to make such data accessible at the earliest possible moment for use by persons needing these fundamental facts. The general conclusions from the water measurements are given out from time to time and incorporated in papers bearing upon specific problems.

The other series of publications consists of papers relating to artesian and other wells and to the geologic conditions governing the occurrence of water beneath the surface. These have been prepared as papers accompanying the Annual Report of the Geological Survey, since in this form they reach a wider circulation and as a rule are more accessible to the public. The principal paper of this series prepared under the current appropriation is one by Mr. G. K. Gilbert upon the resources of a portion of eastern Colorado and western Kansas. This has resulted from a thorough study of the geology of the region in and adjacent to the Arkansas Valley, conducted through several years. Mr. Gilbert began his field work in the vicinity of Pueblo, Colo., where the rocks of the plains region are broken and upturned toward the mountains, offering facilities for a careful inspection and study of their ability to transmit or hold water, and of other details of geologic interest. He has carefully mapped this area and has prepared the results for publication as one or more of the folios of the Geologic Atlas of the United States. Proceeding easterly, he has studied the undulations of the strata and the changes in character, mapping the underground geology and examining carefully all matters bearing upon the probable occurrence of water at various depths. In this way it has been possible to ascertain with a considerable degree of accuracy the distribution of the water-bearing strata and to place upon a secure footing the knowledge of the water resources of this region. His predictions have in a number of instances been verified by recent drilling, and the water thus obtained, in abundant quantity and excellent quality, has greatly added to the property of certain portions of the region.

In the James River Valley of South Dakota, and to a less extent in North Dakota, Mr. N. H. Darton has begun under this appropriation an examination of the artesian conditions, and is preparing for publication maps, diagrams, and illustrations to accompany a report upon the currents of artesian and other well waters. This investigation is not so far advanced as that above mentioned, but promises to yield

results of value to this region, and to cast light upon the phenomena of the occurrence of underground waters. It is too early as yet to predict the extent to which deep-seated waters may be found over the Dakotas, or to cite instances of the local value of this work. It must always be borne in mind that investigations of this character may yield negative results. They may show, after careful work, that at various places the probability of obtaining water through wells is not great enough to justify further attempts. These results, though disappointing, have value in preventing the unwise investment of money in deep wells.

In this enumeration of reports upon water supply should be given the report by Mr. Robert T. Hill upon a portion of Texas. Mr. Hill has been for many years engaged in the study of the geology of this State, and has now in preparation a detailed description of the well waters and the dependence of these upon geologic structure. His paper, now well advanced, will probably be published with the two others mentioned in the forthcoming annual report.

There has already been issued a paper by Prof. Robert Hay, of Kansas, upon the water resources of a portion of the Great Plains. This deals more particularly with the country in the vicinity of Ogallala, Nebr., southward along the State line of Colorado and Kansas. It describes the geology of the country and the water supply as obtained from wells. Professor Hay has shown that over certain areas underlain by pervious materials well waters can be obtained in great abundance; at other large areas, where the underlying rocks are mainly shales, wells are not successful, as the water occurs in quantities too limited, or is too poor in quality. In such regions where well waters can not be had the farmers must resort to storage of floods wherever practicable. It often happens that, although well water can not be obtained, it may be practicable to hold and store in suitable reservoirs the waters of irregularly occurring freshets.

Following are two lists of reports, one on stream measurements and another on underground waters:

LIST OF REPORTS ON STREAM MEASUREMENTS.

Report of Progress of the Division of Hydrography for the calendar year 1895, by Frederick Haynes Newell, hydrographer in charge. This will be issued soon as Bulletin No. 140 of the United States Geological Survey.

Report of Progress of the Division of Hydrography for the calendar years 1893 and 1894, by Frederick Haynes Newell, topographer in charge. This has been published as Bulletin No. 131 of the United States Geological Survey.

The Public Lands and Their Water Supply. This has been issued as an extract from Part I of the Sixteenth Annual Report of the United States Geological Survey.

Results of Stream Measurements. This was published as a portion of Part II of the Fourteenth Annual Report of the United States Geological Survey.

Water Supply for Irrigation. This was published as a portion of Part III of the Thirteenth Annual Report of the United States Geological Survey.

Hydrography of the Arid Region. This was published as a portion of Part II of the Twelfth Annual Report of the United States Geological Survey.

LIST OF REPORTS ON UNDERGROUND WATERS.

The Underground Waters of the Arkansas Valley in Eastern Colorado, by Grove Karl Gilbert. This paper is in preparation for Part II of the Seventeenth Annual Report of the United States Geological Survey; illustrated by maps and diagrams.

The Underground Waters of Texas, by Robert Thomas Hill. This paper is also in preparation for Part II of the Seventeenth Annual Report of the United States Geological Survey; illustrated by maps and sections.

Preliminary Report on the Artesian Waters of a portion of the Dakotas, by Nelson Horatio Darton. This paper, likewise, is in preparation for Part II of the Seventeenth Annual Report of the United States Geological Survey; illustrated by maps, sections, and figures.

The Water Resources of Illinois, by Frank Leverett. In preparation as one of the papers to accompany the Seventeenth Annual Report of the United States Geological Survey.

Artesian Well Prospects in the Atlantic Coastal Plain Region, by Nelson Horatio Darton. This paper is about to be transmitted to the Public Printer for publication as Bulletin No. 138 of the United States Geological Survey.

Water Resources of a portion of the Great Plains, by Robert Hay. This paper has been issued as an extract from Part II of the Sixteenth Annual Report of the United States Geological Survey.

POPULAR REPORTS UPON THE UTILIZATION OF WATER RESOURCES.

At all times since the organization of the present Geological Survey, and even during the life of its predecessor, considerable attention has been given to the water resources, especially of the West. These questions, so vital to the development of the country, have been forced upon the attention of field parties, and have been discussed in a general way as essential to other lines of inquiry. They have been investigated, however, as one of the details of the more general study of the geologic structure of certain areas. Among the best-known publications of one of the early Geological Surveys is the report by Maj. J. W. Powell upon the lands of the arid region, in which the utilization of water resources is discussed. In the preparation of this report some of the geologists and experts now on the present Survey were employed. This fact illustrates the interest shown in such questions at an early time and since maintained by members of this organization.

The Division of Hydrography was created in order to give especial attention to this class of facts, to bring the data together and complete it for reports, as well as to reply to specific inquiries. In carrying out its duties a large amount of information bearing upon the utilization of the water resources has been obtained and placed on file. Comparatively little of this has been printed in the reports above mentioned, as the wording of the law under which the operations are now carried on seems to demand the giving of the greatest attention to field measurements and to the obtaining of new information, rather than to the presentation and popular diffusion of methods of utilizing the water when obtained. The publications referred to as printed and in preparation are therefore for the most part of a technical character, and are printed for limited distribution. They serve as books of reference from which writers and students can draw facts and figures.

It will be possible to extract from the records and files of the Division of Hydrography a large amount of information bearing upon the methods of utilizing the water resources for irrigation, water power, or the manifold other needs of the people, but much of this should be rounded out by further field work and brought up to date. For example, it may be possible to prepare a short bulletin, illustrated with a few figures and sections, showing the method of utilizing the water supply of western Kansas. Such a bulletin, calling attention to the distribution of water in rivers, springs, and wells, its use and storage in reservoirs, and also the possibilities of obtaining supplies from underground by pumping machinery driven by wind or actuated by steam or gasoline engines, would be of considerable value to the inhabitants not only of this particular region, but of many other portions of the Great Plains. A further discussion of the methods of using the water upon the fields by flooding, furrows, and seepage, together with a statement of results accomplished, the value of the crops and lands, and the profits of careful utilization of the water and thorough cultivation, would still further bring to the public attention the resources of

this region and show to the public, as well as the citizens concerned, that prosperous homes can be successfully made in this region of prevalent drought. Small bulletins of this character might be prepared not only for western Kansas, but also for portions of Nebraska, the Dakotas, Texas, eastern Colorado, and, in short, for many portions of the country where the conditions, although in general similar, offer local peculiarities.

The experience acquired by the Division of Hydrography in the investigation of the water resources, and the intimate knowledge of the people and of physical conditions thus acquired are such as to render entirely feasible the preparation of popular reports or bulletins of this character. There is probably no class of employees of the Government who are brought into more direct contact with the people and the country than are the assistants on this Survey, since a large portion of their time is spent in the field, camping or living at the houses of the farmers, stopping as night overtakes them wherever they happen to be. Thus it is that the problems of the reclamation of the arid lands, of the utilization of the streams, and of the underground sources of water have always been and always will be forced strongly upon the attention of these observers.

While the feasibility of preparing such reports from the materials now accumulated, and from further field work, is not doubted, yet it hardly seems proper to do so with the present sum of money available. As shown in the preceding pages, this amount is none too large for the two classes of investigation now in hand, and if a third subject were added, such as the preparation of popular reports or bulletins, under present conditions the available funds for field examinations would be still further reduced.

Yours, with respect, CHAS. D. WALCOTT,
Director.

The SECRETARY OF THE INTERIOR.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 188.

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1896.—Referred to the Committee on Pacific Railroads and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ACTING SECRETARY OF THE INTERIOR, TRANSMITTING, IN RESPONSE TO SENATE RESOLUTION OF FEBRUARY 13, 1896, REQUESTING INFORMATION RELATIVE TO THE UNION PACIFIC, CENTRAL BRANCH UNION PACIFIC, SIOUX CITY AND PACIFIC, AND THE KANSAS PACIFIC RAILROAD COMPANY, REPORT FROM THE OFFICE OF THE COMMISSIONER OF RAILROADS.

DEPARTMENT OF THE INTERIOR,
Washington, March 25, 1896.

SIR: I have the honor to hand you herewith a report from the office of the Commissioner of Railroads on Senate Resolution No. 118, requesting to be furnished with certain information relative to the following-named bond-aided Pacific railroads: "Union Pacific, Central Branch Union Pacific, Sioux City and Pacific, and the Kansas Pacific Railroad Company; also the number of acres of land granted to each and all the Pacific railroads."

From an examination of the report it appears to cover all the points presented by said resolution.

Very respectfully, JNO. M. REYNOLDS,
Acting Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF COMMISSIONER OF RAILROADS,
Washington, D. C., March 21, 1896.

SIR: In the absence of the Commissioner, I have the honor to acknowledge the receipt, by reference from the Department, under date of the 12th instant, of a letter from the Hon. John H. Gear, chairman of the Senate Committee on Pacific Railroads, transmitting a copy of Senate Resolution No. 118, requesting to be furnished with certain information relative to the following-named bond-aided Pacific Railroads: Union Pacific, Central Branch Union Pacific, Sioux City and Pacific, and the Kansas Pacific Railway companies; also, the number of acres of land granted to each and all the Pacific railroads.

In reply thereto, I have the honor to submit, in the form of Exhibits No. 1 to 7, respectively, such of the information called for by the resolution as is in possession of this Bureau.

With regard to the additional inquiry contained in the letter of transmittal, relative to land grants to each and all of the Pacific railroads, I have the honor to state that the information in question is contained in Table No. 7, pages 208 and 209, of the annual report of this Bureau for the fiscal year ended June 30, 1895 (copy herewith).

The letter of Senator Gear, with indorsements, and copy of Senate Resolution No. 118, are returned herewith.

Very respectfully,

F. E. STORM,
Bookkeeper in Charge of Office.

The SECRETARY OF THE INTERIOR,
Washington, D. C.

EXHIBIT No. 1.

UNION PACIFIC RAILROAD.

Question. (1) The number of miles of the main line of the Union Pacific Railroad Company as originally constructed and as it now exists, the estimated actual cost per mile of the construction thereof, its then and present capitalization, and any change that may have been made in its capitalization, and whether, and, if so, when and to what extent its capitalization was changed or increased, and whether such change or increase was authorized or sanctioned by the Government of the United States; the names and residences, respectively, of its stockholders, bondholders, and mortgagees, and the amount of such stocks, bonds, and mortgages held by them, respectively?

Answer:

	Miles.
(1) Original length of main line, Omaha, Nebr., to a point 5 miles west of the Union Station at Ogden, Utah	1,033.46
Subsequently increased by construction of Omaha bridge and approaches	5.00
Total mileage	1,038.46

(2) Omaha to one hundredth meridian, 247 miles, at $35,000	$8,645,000
One hundredth meridian to Piedmont, Wyo., 678 miles, at $50,000	33,900,000
Piedmont to Ogden, Utah, 103 miles, at $90,000	9,270,000
To western terminus, 5 miles, at $90,000	450,000
Total cost of construction	52,265,000
Average cost per mile	50,000

(3) Amount of capital stock authorized by section 1 of the act of 1864, $100,000,000.

At the date of organization of this Bureau (1878) there had been issued and was outstanding capital stock to the amount of $36,762,300, which was the amount at the date of the consolidation, January 24, 1880.

There has been no change or increase in the amount of capital stock authorized to be issued (Union Pacific Railroad).

(4) Early in the history of this Bureau the "Auditor of railroad accounts" (title changed to Commissioner of Railroads by the act of March 3, 1881) endeavored to procure from the company information relative to the holders of stock, but the following extract from a letter of Mr. Henry McFarland, secretary and treasurer, will be found to disclose the reason why such information was withheld:

"On careful reflection and after examination of the act, the company is of opinion that a call from you for a statement of the number of shares held by each of the stockholders, tending as it may to expose the private affairs of such stockholders, and possibly thus to injure them, is neither within the terms nor purview of the act. Since, however, the Government ought to be informed that the number of shares held by each of the directors is equal to that required by the charter, I hereby state to you that each of the directors is shown by the record to be the owner of at least fifty shares of the capital stock of the company."

(Bondholders): The foregoing answer will also cover this question. The company's bond accounts are not open to public inspection; in fact, the company does *not know* where or by whom its bonds are held, as they pass from hand to hand.

(Mortgagees): The amount of mortgage debt, under various designations of lien, and excluding the United States subsidy debt, was $82,782,885 on June 30, 1895.

NOTE.—Under the provisions of the act of March 3, 1887, the United States Pacific Railway Commission, being empowered to send for persons and papers and to administer oaths, etc., obtained this information, which may be found on pages 875 to 885, Volume II, of their report.

EXHIBIT No. 2.

CENTRAL BRANCH UNION PACIFIC RAILROAD.

Question. (2) The number of miles of the Central Branch of the Union Pacific Railroad Company, the estimated actual cost per mile of its construction, its original and present capitalization, and whether, and if so, when and how often its capitalization has been changed or increased, and whether such change or increase, if any, was authorized or sanctioned by the Government of the United States; also the names and addresses, respectively, of its stockholders, bondholders, and mortgagees, giving the amount of such stocks, bonds, and mortgages held by them, respectively?

Answer:

		Miles.
(1) Length of main line, Atchison to Waterville, Kans		100.00
Leased:		
Atchison, Colorado and Pacific Railroad	254.79	
Atchison, Jewell County and Western Railroad	33.40	
		288.19
Total mileage		388.19
(2) Cost of construction, aided portion, per mile		$27,313.47
(3) Capitalization:		
Original		1,000,000.00
Present		1,000,000.00

(4) Same answer as in case of Union Pacific. (See Report Pacific Railway Commission, Vol. VIII, p. 5330.)

EXHIBIT No. 3.

SIOUX CITY AND PACIFIC RAILROAD COMPANY.

Question. (3) The number of miles of the Sioux City and Pacific Railroad Company as originally and at present constructed, the estimated actual cost per mile of the construction thereof, its original and present capitalization, and whether, and if so, when and to what extent its capitalization has been changed or increased, and if such change or increase, if any has been, and whether it was authorized or sanctioned by the Government of the United States; the names and residences, respectively, of the stockholders, bondholders, and mortgagees thereof, and the amount of such stocks, bonds, and mortgages held by them, respectively, and whether such railroad was constructed on the line contemplated by the act authorizing its construction, and if not, whether its present line was authorized or sanctioned by the Government of the United States?

Answer:

	Miles.
(1) Original length of main line, Sioux City, Iowa, to Fremont, Nebr	101.58
Subsequently increased by purchase of branch line, Missouri Valley, Iowa, to California Junction, Iowa	5.84
Total mileage	107.42
(2) Cost of construction	$4,416,620
Average cost per mile	43,000

(3) By the articles of incorporation the authorized capital stock was $6,000,000, of which $2,068,400 has been paid in.

(4) Same answer as in case of Union Pacific. (See Report United States Pacific Railway Commission, Vol. VIII, pp. 5362, 5363.)

(5) Article 2 of articles of incorporation of this company reads as follows:

"This company is organized for the purpose of constructing, maintaining, and operating a railroad from Sioux City, Iowa, to such a point at and upon the Union Pacific Railroad, or the Iowa branch thereof from Omaha, as may be hereafter selected under the provisions of an act of Congress entitled 'An act to aid in the construction of a railroad and telegragh line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862, and the act amendatory thereof."

Under section 14 of the act of 1862, it was provided:

" * * * And whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific Railroad Company is hereby authorized and required to construct a railroad and telegraph from said Sioux City upon the most direct and practical route to a point on and so as to connect with the branch railroad and telegraph in this section hereinbefore mentioned, or with the said Union Pacific Railroad, said point of junction to be fixed by the President of the United States, not farther west than the one hundredth meridian of longitude aforesaid, and on the same terms and conditions as provided in this act for the construction of the Union Pacific Railroad as aforesaid, and to complete the same at the rate of one hundred miles per year; and should said company fail to comply with the requirements of this act in relation to the said Sioux City railroad and telegraph, the said company shall suffer the same forfeitures prescribed in relation to the Iowa branch railroad and telegraph hereinbefore mentioned."

Under section 17 of the act of 1864 the foregoing provision was amended so as to read as follows:

"That whenever a line of railroad shall be completed through the States of Iowa or Minnesota to Sioux City, such company, now organized or may hereafter be organized, under the laws of Iowa, Minnesota, Dakota, or Nebraska, as the President of the United States by its request may designate or approve for that purpose, shall construct and operate a line of railroad and telegraph from Sioux City upon the most direct and practicable route to such a point on and so as to connect with the Iowa branch of the Union Pacific Railroad from Omaha or the Union Pacific Railroad, as such company may select, and on the same terms and conditions as are provided in this act and the act to which this is an amendment for the construction of the said Union Pacific Railroad and telegraph line and branches; and said company shall complete the same at the rate of fifty miles per year: *Provided*, That the said Union Pacific Railroad Company shall be, and is hereby, released from the construction of said branch. And said company constructing said branch shall not be entitled to receive in bonds an amount larger than the said Union Pacific Railroad Company would be entitled to receive if it had constructed the branch under this act and the act to which this is an amendment; but said company shall be entitled to receive alternate sections of land for ten miles in width on each side of the same along the whole length of said branch: *And provided further*, That if a railroad should not be completed to Sioux City across Iowa or Minnesota within eighteen months from the date of this act, then said company, designated by the President as aforesaid, may commence, continue, and complete the construction of said branch as contemplated by the provisions of this act: *Provided, however*, That if the said company so designated by the President as aforesaid shall not complete the said branch from Sioux City to the Pacific Railroad within ten years from the passage of this act, then and in that case all the railroad which shall have been constructed by said company shall be forfeited to and become the property of the United States."

As a matter of fact, the initial point of the Sioux City and Pacific Railroad being located at Sioux City, Iowa, the line of road was constructed in a southeasterly direction for a distance of 70 miles to the point of junction with the Cedar Rapids and Missouri River Railroad (now the Chicago and Northwestern), known as California Junction, and which is actually some 20 miles farther east than the point of departure. It then crossed the Missouri River to Blair and continued on to Fremont, Nebr., which is only a few miles farther west than Sioux City, Iowa. The consent of the Government to this misdirection of its aid appears to have been procured on the strength of the engineer's opinion that the physical difficulties to the crossing of the Missouri River at a point farther up were insurmountable, the bluffs on the Nebraska side rising perpendicularly from 150 to 300 feet.

His report received the indorsement of the engineer of the Cedar Rapids and Missouri River Railroad Company, which was forwarded to Washington, and consent to a change of location thus obtained.

(NOTE.—It should be added that the truth of the foregoing statements as to physical difficulties has been positively denied, and was practically refuted by the subsequent construction of the Nebraska division of the Chicago, St. Paul, Minneapolis and Omaha Railway, which crosses the Missouri River at Sioux City; the ulterior motive of the builder of the road (Mr. Blair) being (1) to get the subsidy, and (2) to build a feeder for the other road which he was engaged in constructing, to wit, the Cedar Rapids and Missouri River.)

EXHIBIT NO. 4.

KANSAS PACIFIC RAILWAY COMPANY.

Question. (4) The number of miles of the main line of the Kansas Pacific Railroad Company as originally and now constructed; the estimated actual cost per mile of its construction; its original and present capitalization, and whether, and if so to what extent, its capitalization has been changed or increased, and whether such change or increase was authorized or sanctioned by the Government of the United States; the names and residences, respectively, of its stockholders, bondholders, and mortgagees, and the amount of such stocks, bonds, and mortgages held by them, respectively, and whether said railroad was constructed on the line and from and to the points contemplated by the act authorizing its construction, and if not, whether its construction on its present line was authorized or sanctioned by the Government of the United States.

Answer:

	Miles.
(1) Mileage of main line, aided	393.9425
Mileage of main line, nonaided	245.5775
Total	639.52
(2) Cost of construction	$34,357,490
Average cost of construction per mile	53,767
(3) Original capitalization	10,000,000
Present capitalization	10,000,000

(4) Same answer as in case of Union Pacific. (See Report Pacific Railway Commission, Vol. VIII, p. 4849 et seq.)

(5) The railroad was constructed on the line contemplated by the act of July 2, 1864 (see 13 Stat. L., 356, sec. 9).

EXHIBIT NO. 5.

UNION PACIFIC, CENTRAL BRANCH UNION PACIFIC, SIOUX CITY AND PACIFIC, AND KANSAS PACIFIC RAILROAD COMPANIES.

Question. (5) The names under which the Union Pacific Railroad Company, the Central Branch of the Union Pacific Railroad Company, the Sioux City and Pacific Railroad Company, and the Kansas Pacific Railroad Company were severally constructed, and whether any changes in the names thereof have taken place since their construction, and, if so, what names have been given to said respective roads, and the names now in use by them, giving specifically all the changes in names and the consolidations, if any, that have taken place from the time of their construction, respectively, to the present moment, to the end that the Senate may be fully informed as to the several names under which these several railroads have been and are now being operated, and have exact information as to the consolidations and changes therein that may have taken place.

Answer. The Union Pacific Railroad Company was chartered by Congress July 1, 1862. The Central Branch Union Pacific Railroad Company was chartered by special act of the legislature of the Territory of Kansas, February 11, 1859, as the Atchison and Pikes Peak Railroad Company. The act conferred upon the Company all the powers, conditions, and provisions of "An act to incorporate the Atchison and Fort Riley Railroad Company, approved February 17, 1857. On January 1, 1867, the name of the company was changed to that of the Central Branch Union Pacific Railroad Company. It was included in the acts of 1862 and 1864, incorporating the Union Pacific Railroad Company, being provided for as one of the branches.

Sioux City and Pacific Railroad Company: This road was included in the acts of 1862 and 1864, incorporating the Union Pacific Railroad Company, being provided for as one of the branches. In 1884 it passed under the control of the Chicago and Northwestern Railway Company by the purchase and transfer to the latter of all but a few shares of the capital stock, and is now, in connection with its former leased line (the Fremont, Elkhorn and Missouri Valley Railroad), operated as part of the Chicago and Northwestern Railway system on its through line from Omaha, Nebr., to St. Paul, Minn.

The Kansas Pacific Railway Company was first chartered by the legislature of the Territory of Kansas as the Leavenworth, Pawnee and Western. It was included in the Pacific Railroad acts of 1862 and 1864, and granted a subsidy in Government bonds of $16,000 per mile, the condition of the subsidy being the same as the grant to

the Union Pacific. On June 6, 1863, the name of the company was changed to the Union Pacific Eastern Division, and by an act of Congress, approved May 31, 1868, to the Kansas Pacific.

The Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company were consolidated under date of January 24, 1880, the name of the company formed by the consolidation being "The Union Pacific Railway Company."

(NOTE.—The title "Union Pacific system," applies to all the roads, including the above, owned, leased, and operated.)

The original names "Central Branch, Union Pacific," and the "Sioux City and Pacific" have not been changed.

EXHIBIT NO. 6.

Question (6). What branches, if any, have been constructed or purchased by said respective railroads and added as feeders or otherwise to their respective main lines, giving the names of all such railroads that may have been thus constructed or purchased by any of them, the cost of such construction or purchase, and the source from which the funds to construct or purchase the same were derived, and whether, and if so, what sums of money were derived from the main lines of said railroads and used in the construction or purchase of any such additional railroads or feeders.

Answer. The branches controlled by the Union Pacific Railroad Company at the date of consolidation (January 24, 1880, were as follows:

	Miles.
(1) Omaha and Republican Valley	74.2
This road was built under contract by the Union Pacific Construction Company, and paid for by the Union Pacific, and all proceeds of sales of stocks and bonds were covered into its treasury.	
(2) Colorado Central Railroad (branches, 59.25 miles)	233
This road was constructed by Mr. Gould in the early days of the company, in opposition to the Denver Pacific, which the Union Pacific did not control. Nearly all the first-mortgage 7 per cent bonds ($4,697,000) were owned by the Union Pacific.	
(3) Utah and Northern	210
This road was built by the Mormons. The Union Pacific obtained control in 1875, by purchase of the stock of the company.	
Total mileage of branches	517.2

Branch of the Kansas Pacific at the time of consolidation: Leavenworth Branch, Lawrence to Leavenworth, Kans., 34 miles.

SEC. 12 (act of 1864). "*And be it further enacted*, That the Leavenworth, Pawnee and Western Railroad Company, now known as the Union Pacific Railroad Company, eastern division, shall build the railroad from the mouth of Kansas River, by the way of Leavenworth, or, if that be not deemed the best route, then the said company shall, within two years, build a railroad from the city of Leavenworth to unite with the main stem at or near the city of Lawrence; but to aid in the construction of said branch the said company shall not be entitled to any bonds * * *."

The branches of the Central Branch Union Pacific Railroad Company are as follows:

	Miles.
Atchison, Colorado and Pacific Railroad	254.79
Atchison, Jewell County and Western Railroad	33.40
Total	288.19

There was advanced by the Central Branch Union Pacific Railroad toward the construction of the various roads, etc., built beyond its own line, various sums of money, which in 1880 resulted in a debit balance of $67,000 on account of the above roads.

The Central Branch Union Pacific, on December 10, 1870, guaranteed the payment of the first-mortgage bonds of the Atchison, Colorado and Pacific Railroad to the amount of $4,070,000, and of the Atchison, Jewell County and Western Railroad to the amount of $542,000, thus creating on behalf of those two roads a contingent liability of $4,612,000.

Branch of the Sioux City and Pacific Railroad Company, Missouri Valley to California Junction, 5.84 miles.

In November, 1870, the executive committee was authorized and directed "to purchase the six and one-half miles of road between Missouri Valley and California Junction, and to issue preferred or other stock in payment therefor," and autho ity *was afterwards* given (July, 1871) to issue a mortagage securing the stock on the "*six and one-half*" miles.

EXHIBIT No. 7.

Question. (7) The total amount of subsidy bonds issued in aid of the construction of said respective main lines, the total number of acres of land donated to each of them by the United States, and whether all of said lands have been selected and taken by them or not, or if any other corporation or company of persons have been formed for the purpose of handling or disposing of said lands, and if so, the names of said corporations or companies, the manner in which the lands have been disposed of by them, if any, and their present condition.

Answer. (1)—

Name of company.	Amount of bonds.	Land granted.	Land patented to June 30, 1895.
		Acres.	*Acres.*
Union Pacific R. R. Co	$27,236,512	12,000,000	4,180,914
Central Branch Union Pacific	1,600,000	781,944	218,250
Sioux City and Pacific	1,628,320	60,000	41,398
Kansas Pacific	6,303,000	6,000,000	2,526,286

(2) When granted lands have been pledged or mortgaged the proceeds of sales of such lands are uniformly placed in the hands of trustees, who are charged with the duty of carrying out the provisions of the several indentures, under which bonds may have been issued by the company, which funds, by virtue of such indentures, are beyond the company's control.

The lands are usually sold for cash or on time contracts.

This office is without information in respect of their present condition.

E. & O. E.

OFFICE OF COMMISSIONER OF RAILROADS,
Washington, D. C., March 21, 1896.

F. E. STORM,
Bookkeeper in Charge of Office.

TABLE NO. 7.—*Statement of issues of bonds and grants of lands to railroad companies coming under the provisions of the act of Congress approved June 19, 1878, with the number of acres patented to and forfeited by the companies, and the number of acres restored to the public domain.*

[Extract from report of Commissioner of Railroads, 1895, pp. 208 and 209.]

Name of company now operating.	Name of company included in the act of June 19, 1878.	Date of act.	Amount of bonds.	Number of acres— Granted.	Patented to June 30, 1895.	Forfeited.	Restored.
Atchison, Topeka and Santa Fe	Atchison, Topeka and Santa Fe	Mar. 3, 1863		3,000,000	2,934,522.86		
	Atlantic and Pacific	July 27, 1866		42,000,000	a1,221,812.53	10,795,480	4,790,000
	Leavenworth, Lawrence and Galveston	Mar. 3, 1863		800,000	69,104.95		
	St. Louis and San Francisco	June 10, 1852		1,161,235.07	728,949.30		
Chicago, Burlington and Quincy	Burlington and Missouri River	May 15, 1856 July 2, 1864		948,643.66 2,441,600	2,762,304.85		
	Hannibal and St. Joseph	June 10, 1852		781,944.83	603,186.34		
Chicago, Milwaukee and St. Paul	Chicago, Milwaukee and St. Paul				186,706.77		
	Hastings and Dakota	July 4, 1866		550,000	355,565.77		
	McGregor and Missouri River	May 12, 1864		1,536,000	138,187.30		
	Minnesota Central	Mar. 3, 1857 Mar. 3, 1865		643,403	179,706.01		
	Southern Minnesota	Mar. 3, 1857 July 4, 1866		794,619.45	509,992.69		
Chicago and Northwestern	Chicago and Northwestern	June 3, 1856 July 5, 1862 Mar. 3, 1865		1,165,575.76	1,073,554.08		
	Chicago, St. Paul, Minneapolis and Omaha	June 3, 1856 May 5, 1864		2,173,706.43	2,166,436.10		125,000
	Cedar Rapids and Missouri River	May 15, 1856		1,298,739	919,142.57		
	St. Pau' and Sioux City	Mar. 3, 1857 May 12, 1864		1,010,000	1,157,048.52		
	Sioux City and St. Paul	do		524,800	407,910.21		26,017.33
	Sioux City and Pacific	July 1, 1862 July 2, 1864	$1,628,320.00	60,000	41,398.23		
	Winona and St. Peter	Mar. 3, 1857 Mar. 3, 1865		1,410,000	1,676,787.31		
Chicago, Rock Island and Pacific	Chicago, Rock Island and Pacific	May 15, 1856		1,261,181	420,507.34		
Great Northern	St. Paul and Pacific	Mar. 3, 1857 Mar. 3, 1865		1,838,638.95	2,134,567.29		
	St. Paul, Minneapolis and Manitoba	Mar. 3, 1857		885,000	785,288.91		
Illinois Central	Dubuque and Sioux City Iowa Falls and Sioux City	May 15, 1856		1,226,163	327,690.39 683,023.80		
Little Rock and Memphis	Memphis and Little Rock	Feb. 9, 1853 July 28, 1866		438,646	167,567.25		
Missouri, Kansas and Texas	Missouri, Kansas and Texas	Mar. 3, 1863		1,520,000	713,015.18		5,700
Missouri Pacific	Little Rock and Fort Smith	Feb. 9, 1853		b1,100,000	1,057,647.55		
	St. Louis, Iron Mountain and Southern (Cairo and Fulton).	do		1,178,411.05	1,383,423.27	601,600	c15,000

Northern Pacific	Northern Pacific	July 2, 1864		47,000,000	6,737,743.76		8,978 800
St. Paul and Duluth	St. Paul and Duluth	May 5, 1864		920,000	828.510		8,000
Southern Pacific Company	Central Pacific	July 2, 1864	25,885,120.00	8,000,000	1,585,087.31		
	California and Oregon	July 23, 1866		3,500,000	1,856,401.91		
	Oregon and California (including the Oregon Central).	July 25, 1866; May 4, 1870		4,700,000	1,162,067.28	*d* 2,010,880	1,800,000
	Western Pacific	July 1, 1861	1,970,560.00	1,000,000	448,130.65		
	Southern Pacific of California	June 3, 1857; July 27, 1866; Mar. 3, 1871		10,487,840	2,824,733.65		4,350,000
Texas and Pacific	Texas and Pacific	do		3,520,000			
	New Orleans, Baton Rouge and Vicksburg.	do		18,000,000		15,692,800	
	Vicksburg, Shreveport and Pacific	June 3, 1856		3,800,000	916,022.84	352,587	
Union Pacific	Union Pacific	July 1, 1862; July 2, 1864	27,236,512.00	610,880			19,000
	Central Branch, Union Pacific	do	1,600,000.00	12,000,000	4,180,914.09		
	Denver Pacific	July 1, 1862		781,944.83	218,250.08		
	Kansas Pacific	do	6,303,000.00	1,000,400	209,349.23		
	St. Joseph and Grand Island	July 23, 1866		6,000,000	2,526,286.79		
Wisconsin Central	Wisconsin Central	May 5, 1864		1,700,000	462,573.24		
				1,800,000	770,727.08		200,000
	Total		64,623,512.00	196,569,372.03	49,532,445.28	29,453,347	20,317,517.33

NOTE.—The even-numbered sections on line of Pacific railroad and branches were restored to the public domain by the act of March 6, 1868. Lands adjacent to uncompleted portions of these roads were forfeited by the act of July 6, 1866.

a Including 513,289.06 acres of grant to St. Louis and San Francisco railroad.
b See Poor's Manual of Railroads, 1874–75.
c See report under head of St. Louis, Iron Mountain and Southern railroad.
d See Report General Land Office for 1888, page 256.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 189.

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1896.—Referred to the Committee on Appropriations and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ACTING SECRETARY OF THE TREASURY, TRANSMITTING, IN RESPONSE TO RESOLUTION OF THE SENATE, DATED FEBRUARY 13, 1896, DIRECTING THE SECRETARY OF THE TREASURY TO CAUSE THE PROPER ACCOUNTING OFFICERS OF THE TREASURY TO REEXAMINE CERTAIN CLAIMS REPORTED TO CONGRESS IN HOUSE EX. DOC. NO. 234, FIFTY-THIRD CONGRESS, THIRD SESSION A REPORT THEREON BY THE COMPTROLLER OF THE TREASURY.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 25, 1896.

SIR: In reply to Senate resolution of February 13, 1896, directing the Secretary of the Treasury to cause the proper accounting officers of the Treasury to reexamine certain claims reported to Congress in House Ex. Doc. No. 234, Fifty-third Congress, third session, I have the honor to transmit herewith a report thereon by the Comptroller of the Treasury, dated the 24th instant, in which the Secretary concurs.

Respectfully, yours,

S. WIKE, *Acting Secretary.*

The PRESIDENT OF THE SENATE.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, D. C., March 24, 1896.

SIR: I have received, by your reference, an attested copy of the resolution of the Senate of the United States adopted February 13, 1896, as follows:

Resolved, That the Secretary of the Treasury be, and he is hereby, directed to cause the proper accounting officers of the Treasury to reexamine Treasury settlements Nos. 9672, 9686, 9667, 9668, 9671, 9673, 9676, 9677, 9683, 9688, 9690, 9678, 9687, 9679, 9693, 9697, 168, 9659, 9684, 9685, 9674, 9675, 9691, 9661, 9689, 9692, 9694, 9670, and 9680, being claims for barracks and quarters certified to Congress for appropriation in House Ex. Doc. No. 234, Fifty-third Congress, third session, for the payment of which no appropriations have been made, and if found correct to report the same to Congress at as early a day as practicable at the present session.

The accounts therein referred to were duly settled in the manner provided by law, and under the established practice requiring newly

discovered and material evidence, fraud, or manifest error in calculation, in order to justify the reopening of a settled account, are not subject to official reexamination and settlement by this office at the present time. Authority to reopen and resettle these accounts might no doubt be conferred by act or joint resolution, but clearly could not be conferred by the resolution of the Senate only.

Complying, however, with the spirit of the resolution, I have caused said accounts to be examined so far as to ascertain whether they are within the class of cases covered by the opinion of Second Comptroller Mansur of September 28, 1894, as printed in House Report No. 1843, Fifty-third Congress, third session.

The line drawn between claims arising upon an implied contract for the use and occupation of real estate by troops in border States during the war, for which the Government is specifically liable, and those claims for such use and occupation which do not arise upon an implied contract, and designated usually as war claims which are subject only to allowance by Congress, is a very narrow one, and it is oftentimes difficult to determine upon which side of the line any particular claim falls.

From the examination which has been made by a competent clerk of this office under my personal direction, and in doubtful cases reviewed by myself, all the settlements are apparently covered by the principle of Mr. Mansur's decision, although there may be some doubt as to the following settlements: Nos. 9667, 9659, 9685, 9692, 9694, 9670.

As the evidence as to the rental value of such property is generally conflicting and of uncertain value, leading oftentimes two different minds to take different views upon the subject, I have not deemed it proper to examine the evidence in these cases in order to put on record an unofficial opinion as to the correctness of the official settlements made by the late Second Comptroller.

Respectfully, yours,

R. B. BOWLER, *Comptroller.*

The SECRETARY OF THE TREASURY.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 190.

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

Mr. CHANDLER presented the following

PETITION OF THE MUSKOGEE OR CREEK AND SEMINOLE NATIONS, PRAYING CONGRESS TO TAKE SUCH ACTION AS WILL PREVENT THE PASSAGE OF THE MEASURES PENDING, WHICH ARE CALCULATED AND INTENDED TO DESTROY THEIR LOCAL GOVERNMENTS, TO DEPRIVE THEM OF THE RIGHT OF SELF-GOVERNMENT, TO ROB THEM OF THEIR HERITAGE, AND TO ABOLISH AND ANNIHILATE THEIR TRIBAL EXISTENCE.

To the Congress of the United States:

The Muskogee or Creek and Seminole Nations, by their duly authorized representatives, do hereby most respectfully petition your honorable body to take such action as will prevent the passage of the measures now pending before you, which are calculated and intended to destroy our local governments, to deprive us of the right of self-government, to rob us of our heritage, and to abolish and annihilate our tribal existence.

We desire, respectfully, to call your attention to the fact that under the solemn treaty stipulations the right of unrestricted self-government has been guaranteed to our people.

You have recognized and respected that guaranty for many years, and under it we have established and maintained local governments in form similar to your own. Our people have advanced in all the arts of civilization, churches have been established, and a system of common schools has been maintained, and provision for the liberal education of our youth has been provided, and all branches of industry have been promoted. We point with proud satisfaction to the influence of these instrumentalities as tending to Christianize, educate, and elevate our people and fit them for the higher duties and responsibilities which should characterize free men and patriotic citizens.

Under this system of government our people are making commendable and satisfactory progress, and their pride and ambition are stimulated to increased efforts for higher and greater achievements.

While we do not pretend that our governments are perfect, either in form or in the methods of administration, because we realize that no human governments are perfect, still we invite the closest scrutiny into all our local concerns, and particularly as to the protection of the rights of persons and property within our limits. We challenge the most searching investigation into all our affairs, feeling assured that as a result of such investigation our people will receive full and complete vindication.

If at any time the rate of crime in our country has exceeded that of the States of the Union, it has resulted from the fact that a large number of those who belong to the criminal classes have invaded our Territory from adjacent States, in violation not only of our laws, but of the laws of the United States.

It is our desire especially to enter our solemn protest against those statements contained in the report of the Dawes Commission which charges crime, corruption, and misrule among our people, and we challenge the most searching investigation by a committee of honest, impartial, and fair men into the condition of our people, the manner in which our laws are administered, and the provision we have made for the protection of the lives and property of those who may reside among us.

We are prepared to say for our people that upon such a report, coming from such a source, they will be willing to stand and to abide for all the purposes of future action in regard to them.

But we do most solemnly protest against the enactment of any legislation predicated upon the report of the Dawes Commission which will affect the autonomy of our governments.

In all our public and domestic affairs we have sought to pattern after your form of government and liberal institutions, and to emulate the Christian civilization of your intelligent and patriotic people. If we have fallen below the highest standards illustrated by your superior intelligence and advanced civilization, it may be possible that you are in part responsible, as the invasion of our Territory by criminals and covetous land grabbers has disturbed the peace of our country and injured the good reputation of our law-abiding and peaceable people.

In the name of sacred treaty stipulations, in the name of statutory provisions, which you have enacted for our protection, in the name of the decisions of your judicial tribunals, and in the name of national honor we appeal most earnestly to you, the representatives of this great Christian nation, to spare our homes, our firesides, our institutions, and our inestimable heritage, and let us alone until such time as we have, under the inspiration of Divine Providence, encouraged by the example of your liberal institutions and superior civilization, worked out our own welfare and destiny.

Very respectfully submitted.

G. A. ALEXANDER,
S. B. CALLAHAN,
E. B. CHILDERES,
D. V. ANDERSON,
Delegates for the Creek Nation.
HULBUTTA MEKKO,
JOHN JUMPER,
Delegates for the Seminole Nation.
SAMUEL H. MILLER,
Interpreter.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 191.

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1896.—Referred to the Committee on Military Affairs and ordered to be printed.

Mr. BRICE presented the following

MEMORIAL FROM THE AGENTS OF THE STATES OF OHIO AND PENNSYLVANIA IN CONNECTION WITH CLAIMS OF SAID STATES, UNDER ACT OF JULY 27, 1861, AS STATED IN SENATE DOCUMENT NO. 75, FIFTY-FOURTH CONGRESS, FIRST SESSION, FOR THE AMOUNTS DUE THEM FOR EXPENSES INCURRED IN RAISING TROOPS.

To the Honorable the Committee on Military Affairs of the Senate of the United States:

The undersigned, representing the States of Ohio and Pennsylvania, respectfully submit the following statement in explanation of the resolution of the Senate of January 28, 1895, and of the answer of the Secretary of the Treasury of January 15, 1896, in reply thereto, all of which is printed in Senate Doc. No. 75, Fifty-fourth Congress, first session.

STATEMENT.

The resolution is as follows:

That the Secretary of the Treasury be, and is hereby, directed to cause to be ascertained from the claims of the several States now on file in the Treasury Department under act of July 27, 1861, the amounts due them for expenses incurred in raising troops, as provided by the order of the Secretary of the Treasury of February 8, 1893, and to report the same to the Senate.

The order to which the resolution refers was an order of Secretary Foster, of which the following is a copy:

TREASURY DEPARTMENT,
Washington, February 8, 1893.

SIR: The matter of the application of the State agents of the States of New York, Pennsylvania, Kentucky, and Ohio, for a modification of certain rules formulated by the Honorable Secretary of the Treasury, Salmon P. Chase, August, 1861, for the use and guidance of the accounting officers in the adjustment and settlement of the war claims of the States, under the act of Congress approved July 27, 1861, having been submitted to the Honorable Second Comptroller for his examination and opinion, that officer recommends a change of said rules, as clearly within the act of July 27, 1861. Believing that a more equitable rule could have been established under the law, it is ordered that, for the purpose of ascertaining the amount involved in the settlement of claims affected by such change of rules, the accounting officers open and adjust the claims now filed in the office of the Third Auditor, on the basis of a change of rules, such as recommended by the Second Comptroller, and, when ascertained, the same to be submitted to the Secretary of the Treasury for such further disposition as he may deem proper in the premises.

CHARLES FOSTER, Secretary.

The adjustment ordered has been made by the Third Auditor and is reported by the present Secretary of the Treasury to the Senate, as required by said resolution.

The Auditor finds due the States named the amounts set opposite their names, as follows, to wit:

Maine	$6,353.53
New Hampshire	567.34
Vermont	10,453.73
Massachusetts	1,779.57
Connecticut	12,911.56
New York	17,282.99
New Jersey	313.10
Pennsylvania	36,375.02
Kentucky	22,022.31
Ohio	40,339.14
Michigan	3,008.81
Illinois	16,976.61
Wisconsin	7,491.31
Indiana	1,614.28
Iowa	17,470.73
Making a total of	195,260.43

These allowances, the Auditor says, are mainly sums that have been disallowed solely on the ground that the expenses incurred and paid were on account of officers and men not mustered into the service of the United States.

The causes that prevented them from being mustered were such as are liable to happen in the organization of all regiments and would have happened had the business of recruiting been conducted by the United States through its own officers. These causes arose from disabilities unknown at time of enlistment of the men or happening afterwards, or from other causes, as when officers were thrown out by the consolidation of their commands with other organizations, rendered necessary by the exigencies of the service, the United States at the same time receiving the benefit of their services by mustering into the service the men the officers had recruited.

The troops were raised by the governors for the service of the United States in the same manner that they raised other troops, upon appeals made upon them by the President for troops for the defense of the United States.

Governors of States were authorized by the War Department, by General Orders, No. 78, of 1861, to prepare and organize troops for the service of the United States in such manner as they may deem best, and were made by General Orders, No. 18, of 1862, the legal authority for raising troops.

They were the duly constituted agents of the United States for the purpose of raising State troops for the defense of the Government, so constituted by the act of July 27, 1861, which directs that "the Secretary of the Treasury shall pay to the governor of any State, or to his duly authorized agents, the costs, charges, and expenses properly incurred by such State for enrolling, subsisting, equipping, and supplying * * * its troops."

Nothing is said in this act about troops being mustered into the service of the United States. The word muster is not mentioned in it. "Troops employed in aiding to suppress the insurrection against the United States" is the language of the statute.

The States contend that troops were employed "in aiding to suppress *the insurrection*," when in pursuance of a call made by the President

upon their governors for troops, they organized them into regiments, placed them in camps of instruction to perfect them in the arts of war, and clothed, equipped, and armed them for active service in the field.

The act of July 27, 1861, is (says Justice Harlan in his decision lately rendered (December 6, 1895) in the New York interest claim) a "solemn declaration" by the United States—

that the costs, charges, and expenses properly incurred by any State in raising troops to protect the authority of the nation would be met by the Government. To remove any possible doubt as to what expenditures would be so met, the act of 1862 declared that the act of 1861 should embrace expenses incurred before as well as after its approval. It would be a reflection upon the patriotic motives of Congress if we did not place a liberal interpretation upon those acts and give effect to what, we are not permitted to doubt, was intended by their passage. Liberally interpreted it is clear that the acts of July 27, 1861, and March 8, 1862, created on the part of the United States an obligation to indemnify the States for any costs, charges, and expenses incurred for the purposes expressed in the act of 1861, the title of which shows that its object was to indemnify the States for expenses incurred by them in defense of the United States.

These, says Justice Harlan, were the kind of telegrams that were sent by the Government to the governor of New York, to wit:

Buy arms and equipments as fast as you can; we pay all. Adopt such measures as may be necessary to fill up your regiments as rapidly as possible. We need the men.

The same kind of telegrams were sent to the governors of the other loyal States.

What the Government most needed was troops. It had been deserted by many of its trusted councilors in the halls of Congress. Its Army and Navy were scattered far and wide, and many of its best officers, though raised and nurtured at its breast, were leading the forces of the enemy.

The loyal States responded to the appeals of the Government with an enthusiasm unbounded, pouring out their treasures and their troops, raw and undisciplined, from the professions, the counting houses, the workshops, and the plow.

What the Government most needed was immediate assistance. Six days before the passage of the act of July 27, 1861, our troops had met with a serious reverse at Bull Run. Congress had by act of July 22, 1861, authorized a call for 500,000 men, which, by act of July 25, 1861, was duplicated.

Reading the act of July 27, 1861, in the light of these events and of the interpretation given to that act by the Supreme Court, it is clear that Congress intended thereby to indemnify the States for any costs, charges, and expenses incurred by them for the purposes therein expressed.

All the States desire is a fulfillment of this obligation, and they feel confident that your honorable committee will speedily take such measures as will secure to them the payment of the amounts found due them by the Third Auditor, which they ask may be referred to the Committee on Appropriations.

Your attention is particularly invited to the reasons advanced by the Assistant Secretary of the Treasury, Mr. Lamberton (in his letter of February 7, 1893, to Secretary Foster), for opposing any change in the Chase rules.

As to the interpretation that he says is placed on the act of July 27, 1861, by rule 2, namely, that troops were not employed in aiding to suppress the insurrection against the United States unless the troops were mustered into the service of the United States, such interpretation is clearly contrary to the meaning and intent of said act. This Mr. Lam-

berton admits, who says that "a broader or more equitable rule could, without doubt, have been established under the law;" but he maintains that the Chase rules ought not to be changed, because "the interpretation given to them and the rules have been in force in the Treasury Department for fully thirty years," and, in the second place, because Congress followed this interpretation by limiting in the appropriation act of February 25, 1862, reimbursement for State expenses "to expenses incurred on account of volunteers called into the field" to which he says they were limited in the act of July 27, 1861.

If the Chase rules do not correctly expound the law they should be abrogated. Furthermore, they have not been in force for fully thirty years.

On the contrary, these rules have been changed repeatedly by the Comptroller, upon the application of the States, who have ever since their adoption persistently contended that they did not correctly expound the act of July 27, 1861, and the settlements made from time to time under these changes have been approved by the Secretaries of the Treasury. In fact, these rules have been practically disregarded in these settlements, as the sequel will show.

For example:

Rule 1 required original vouchers to be filed.

The claims of Illinois and Massachusetts were settled without vouchers, the former on mere abstracts and the latter on copies of vouchers.

Rule 2, one of the rules modified, which is said to forbid any payments for troops unless the troops were mustered into the service of the United States.

New York was paid for troops not so mustered, who were State troops employed by the governor in 1863 in putting down the draft riots.

So was Massachusetts for the Boston draft riots, whose case was sent to the Attorney-General, who decided that the troops were employed in aiding to suppress the insurrection against the United States.

New York was also paid for State troops employed in guarding United States property.

Many similar cases might be cited.

Rule 3 prohibited allowances to State agents except for their traveling expenses.

The States have been reimbursed for salaries paid the staff officers of the governors and their clerks.

Rules 4 and 6 required bills of particulars and bills of lading to be filed. Many allowances have been made without this evidence.

Rule 7 prohibited the payment of claims for damages; yet such claims have been paid where the property was used by troops for recruiting purposes and the damages were merely the usual and ordinary damages incident to the use of property by troops.

The second contention of Mr. Lamberton is as untenable at the first.

The clause in the appropriation bill of February 25, 1862, which, he says, is in the act of July 27, 1861, to wit: "Expenses incurred on account of volunteers called into the field," is not in that act at all. Therefore it can not be regarded as a legislative interpretation of that act.

Besides, the clause does not signify troops mustered into the service of the United States.

Volunteers are called into the field when the President issues his *call for them.*

The only act by which Congress placed an interpretation upon the act of July 27, 1861, was the act of March 8, 1862, which was in words following, to wit:

> That said act (act of July 27, 1861) shall be construed to apply to expenses incurred as well after as before the date of the approval thereof.

This act was passed for the express purpose of correcting a misinterpretation placed upon the act of July 27, 1861, by the Chase rules, one of which (rule 9) provided that "each State must present its full and final account under the act of July 27, 1861, up to the date of the passage of that act."

The act of March 8, 1862, ought to be sufficient in itself to satisfy your honorable committee that the act of July 27, 1861, has not been correctly interpreted by the Chase rules.

The adjustments made by the Third Auditor are unquestionably correct adjustments within the true intent and meaning of the act of July 27, 1861, and they should be speedily appropriated for.

W. O. TOLFORD,
Representing the State of Ohio.

LEWIS S. WELLS,
Representing the State of Pennsylvania.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 192.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

Mr. ALLEN presented the following:

A BRIEF HISTORY OF THE SANTEE SIOUX INDIANS OF NEBRASKA AND THE FLANDREAU SIOUX INDIANS OF SOUTH DAKOTA, BY REV. JAMES GARVIE.

The Santee Sioux Indians of Nebraska and the Flandreau Sioux of South Dakota were formerly known as the Medawakanton and Wahpakoota, or Sioux of the Mississippi. These Indians inhabited a wide tract of land lying along the western boundary of Wisconsin, the northwestern part of Illinois, the northern part of Missouri, the whole of the State of Iowa, the eastern part of North and South Dakota, and the southern part of Minnesota. Their permanent home, when they first came in contact with the white man, was on both sides of the Mississippi River, between La Crosse, Wis., and St. Paul, Minn., and also along the Minnesota River. They have made various treaties with the United States under various names. (See Revision of Indian Treaties, pp. 634, 780, 869, 870, 876, 882, 885.) The name Medawakanton means "sacred lake," or "spirit lake village," and Wahpakoota means "leaf shooters," and thus some of their treaties are entered into under the name of "Sioux of the Leaf" and "Sioux of the Mississippi" or "Sioux of the Lake," etc.

Until the year 1837 the Medawakantons were composed of seven bands, numbering about 1,700, and they entered into a treaty with the United States, dated September 29, 1837, which was ratified June 15, 1838 (7 Stat. L., 538). It will be observed that the Medawakantons were the only Indian parties to this said treaty.

About this time the Medawakantons inhabited both sides of the Mississippi River at the place heretofore described. According to the above-mentioned treaty, the Medawakantons relinquished their title to all land lying on the west side of Wisconsin along the Mississippi River for the small sum of $300,000, to draw 5 per cent interest forever, and other articles named for different periods of time.

After the treaty of 1837 the Medawakantons had their permanent home on the west side of the Mississippi River. The places where they made their homes afterwards became town sites, namely, Wabasha, Red Wing, Mendota, and other places.

It would seem from the records of legislation that the name "Sioux of the Mississippi" was used in making appropriations for the Medawakantons, the treaty of 1837 being made with them exclusively.

The Indian Bureau and the Interior Department are also of the opinion that the Sioux of the Mississippi means the Medawakantons, Wahpakoota, Sissetons, and Wahpetons; but this opinion is incorrect, for the old men of the Sisseton and Wahpeton tribes acknowledge that they were without rations or annuity goods up to that time, unless the good-hearted Medawakantons extended to them part of their annual allowance from the United States; and the Sissetons and Wahpetons made no treaties with the United States until after one was made exclusively by them at Traverse des Sioux, July 23, 1851 (10 Stat. L., 949).

On August 5, 1851, the Medawakantons made another treaty with the United States at Mendota, under which a small roaming band of about three or four hundred Indians was admitted as a part of the confederacy of the Medawakantons. They were known as the Wahpakoota band, and have been connected as legal members of the Medawakanton Sioux band since then.

Under the treaty of 1851 the Medawakantons and Wahpakootas agreed to be removed to certain reservations set aside for their permanent home. (See Articles III and IV of the treaty of 1851, 10 Stat. L., p. 954.) The Sissetons and Wahpetons also agreed to be removed to their permanent reservation set apart for their home under the agreement of 1851. (See Articles II and III, treaty of 1851, Vol. 10 Stat. L., p. 949.)

Prior to these two treaties the Medawakantons and Wahpakootas were occupying territory all along the Mississippi and mouth of the Minnesota River, or in the east central part of the country now known as the State of Minnesota, and the Sissetons and Wahpetons were occupying the west central part of Minnesota, or the region lying along the source of the Minnesota River, Big Stone Lake and Traverse Lake. The distance between the two bands or parties was something over 200 miles. The distance was not so great but that they could visit, as they speak the same language, though they recognize each other as distinct bands or nations.

Not until the two treaties named did the Government fulfill its agreement under the articles named, to bring the four bands together at their proposed permanent homes on the Minnesota River, immediately west of New Ulm.

According to the description of the treaties named, these four bands were to occupy a tract of land 10 miles wide on either side of the Minnesota River, beginning on the east at a small creek called Rock Creek, extending to the west about 140 miles, touching on the north side of the Minnesota River the counties of Chippewa, Renville, Sibley, and Nicollet, and on the south Brown, Redwood, Yellow Medicine, and Lac qui Parle counties.

When these four bands of Indians were brought together at their new agencies they were recognized by their respective positions, and the Medawakantons and Wahpakootas were known as "Lower Sioux," or Redwood Agency Indians, because they occupied the lower part of the Minnesota River, and the Sissetons and Wahpetons were known as "Upper Sioux," or Yellow Medicine Agency Indians. It was while they were here that the outbreak occurred, under a severe strain produced by intruding whites of all classes and ranks.

The general story seems to be that these four bands of Indians had adopted civilization to a certain extent and depended upon farming and rations of the Government, and on their credit with the traders. The war of the rebellion broke out and appropriations were behind time,

and some of the white men who pretended to be friends of the Indians alleged that the annuities were not to be paid, for the Government was carrying on a great war that would use up all the money. Traders refused to credit the Indians any longer. The agent also refused to aid them with rations, while in the warerooms there was plenty. Unfortunately, the year before the outbreak of 1862 a drought had prevailed all over the territory occupied by the Indians, and as they could no longer depend on hunting, but were trying to support themselves on farming, they had a hard time during the winter of 1862, and with money and annuity goods behind time. Some of the Sissetons and Wahpetons who came down to draw their annuity goods and money payments were disappointed and broke into the warehouse to help themselves, for which they were threatened by the United States troops; but wise counsel and cool management brought matters to a peaceable conclusion.

About this time many of the Indians went off to hunt and to find something to eat. One of the parties who went away committed a depredation upon some white farmers, which is set out in the affidavit of Robert Hakewaste in Senate Document No. 85, Fifty-fourth Congress, first session.

It is not my intention to go into the details of the outbreak of 1862, but to use it in connecting the events of history.

Many of the Indians at this time, who had become Christianized by missionary workers among them, and many of the old chiefs, were actuated with a purpose to live like white people, and educate their children, but, like other people, they had some bad, restless, discontented, warlike persons among them, who provoked trouble and compelled the better element to join them by threats of death. I was told by one of the old men, who was in the midst of the outbreak, that he saw with his own eyes Chief Wabashaw caught by his arms and dragged to the front of the trouble, and he tried to keep away from the trouble and take no part in it, and as he could not get himself loose from them, he sobbed like a child; that all of the chiefs of the Medawakantons and Wahpakootas were opposed to an outbreak except one, Little Crow, so often named in history, and his followers.

This statement can be confirmed by consulting the Commissioner's report of 1862 (p. 314), where a statistical report will be found, made by one of the army officers, showing that over three-fourths of the Medawakantons and Wahpakootas, with their chiefs, voluntarily gave themselves up to General Sibley. Out of that number there were only 300 Sissetons. These people stopped, though they knew the troops were after them, and concluded to make peace, which was accomplished by a letter found by some of the members of the Medawakanton and Sisseton bands who went to the camp of General Sibley near Yellow Medicine. This party who went out to investigate matters in the rear of the place of the trouble found a letter in a deserted camp containing these words:

All those who want peace must make a camp by themselves away from the hostile Indians and put up a sign of the white flag. By so doing no one will be harmed, and they who do so must keep their post. If you want to make peace, send someone immediately with a white flag, and no one will harm him, and he shall return to your camp safely. If you want to follow this plan, it will be well for you to do so right away. Those who wish to be friendly we do not desire to harm, but we will fight those who wish to fight us, and those only.

Gen. H. H. SIBLEY.

This note was read in camp at Yellow Medicine Creek, where the Medawakantons and the other three bands were camped for the purpose of considering which was the best way to make peace. When the letter quoted was brought to the camp, they immediately held a council and selected two mixed-bloods of Medawakanton descent, who were called Thomas Robinson and Thomas A. Robertson, to go to General Sibley's camp and make peace with him for those who desired to make peace. They could have gotten away from General Sibley if they had chosen to do so, but they preferred peace. After peace was accepted General Sibley's troops came to the camp and peace was acknowledged between them, and the Indians delivered up over 250 white captives, including women and children.

From this camp the Indians were invited to come to Yellow Medicine Agency, which was in ruins, except a few of the houses, which were in proper shape to be used as guardhouses. In a stealthy way groups of men were called together at the agency buildings, for what no one seemed to know; but soon the white men, who wished to make peace, were discovered holding a court-martial, and the work of disarming was in progress, and as a man was disarmed he passed into one of the empty agency buildings bound hand and foot, mostly by twos. Soon the work was completed, and the families of the prisoners were taken to Fort Snelling, near the mouth of the Minnesota River, and the male prisoners were taken to Mankato, Minn., where a further investigation was to be had. This occurred in the winter of 1863.

A military court was created, before which seven-eighths of these men were brought to prove their innocence or be condemned as guilty. Of those who were thus brought to trial, about 50 were acquitted, 303 were condemned to be hanged, and 20 were condemned to be imprisoned for from one to five years.

In looking back upon the work of condemnation accomplished by that court, two things are very apparent: First, in the majority of instances the trial was so brief and hurried that the facts could not possibly be ascertained. It is to be remembered that forty cases were finished in one day, and there were other days when over thirty cases were disposed of. Second, the principle that all participation in the outbreak was punishable by death, acted upon by the court, was a very wrong one. In many cases persons acknowledged that they had been present at some battle, as at Fort Ridgely, New Ulm, Birch Coolie, or Woodlake, and if a man was present at one of these places with a gun and ammunition, and had fired off that gun, there was one law of condemnation for him. In addition to this, it was held that a half-breed might be forced to go into these battles, but not a pure Indian.

In considering this action of the military court, as it has now become a matter of history, it is necessary to remark that the action and the principles on which it was based were the result of the highly exasperated state of feeling which existed in the minds of all white people on the border against all Indians. "They are Indians" was regarded as sufficient justification for hasty and superficial trials. Six months afterwards, when men came to discriminate, the same court would have conducted the trials more properly, and the majority of the findings would have been quite different.

The report of the military court was transmitted to the President of the United States, Abraham Lincoln. Thirty-eight of these prisoners were hanged, and the remainder of the three hundred were imprisoned at Mankota for the winter. As soon as the river was navigable the prisoners were transported to Davenport, Iowa, while their

families, who were quartered at Fort Snelling for the winter, were also transported on a steamer by way of St. Louis, and were taken to Crow Creek or Fort Thompson.

These poor women and children had to remain there for two years, fatherless, with scanty rations and fruitless toil in gardens, owing to the fact that it was exceedingly dry during those two years and nothing was produced.

After two years of fruitless experiences in trying to raise crops to make a living, they were once more removed to the mouth of the Niobrara River, in the then Territory (now State) of Nebraska. Under an act of February 3, 1863, Congress, after abrogating all the treaty stipulations, provided for 80 acres of good agricultural lands outside of the limits of Minnesota for the use of each. For once the Government authorities tried to fulfill one of its obligations, as these people, who were placed on a desert, or nearly a desert, were removed to fertile land at the mouth of the Niobrara River. But, alas! the whites were there before the Indians, and some measures had to be taken to put the Indians away from the white community. Although the President of the United States, Andrew Johnson, ordered that certain tracts of land should be held for these homeless people, still the white people first and the Indians last was the rule of the Government who promised to care for the latter.

So these people must move farther east, toward the roughest of the Missouri bluffs, and here they remain to this day, under difficult circumstances—a place where the experienced white farmers have hard work to make both ends meet. Still, this is the place where the Government expects the Indians to be self-supporting and good, respectable citizens!

It is at this place where a sudden change of name from the Medawakanton and Wahpakoota to the Santee Sioux took place. The Indians themselves do not know how it came about, but it is supposed that this name was applied to them by those who were west of the Missouri River, who were known to call all Indians east of the Missouri River Santee Indians.

54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 193.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1896.—Ordered to be printed.

Mr. PEFFER presented the following

ARGUMENT OF HON. CHARLES F. MANDERSON BEFORE THE COMPTROLLER OF THE TREASURY IN RELATION TO THE PAYMENT OF THE SUGAR BOUNTY AUTHORIZED BY THE ACT OF MARCH 2, 1895.

TREASURY DEPARTMENT,
Washington, D. C., August 7, 1895.

Mr. MANDERSON. If your honor please, I approach the consideration of the matter in hearing with considerable degree of diffidence and a reluctance prompted by several causes. The questions involved are momentous; the interests that are at stake are of great magnitude. They are particularly important to the State of which I am a citizen. Interests there, public and private, of great promise and matters of commercial and agricultural business of great pith and moment are in jeopardy; and the fact that the State of Nebraska in the first instance, and second that the welfare of this great country are largely involved, cause me to feel great regret that time has not been afforded to me to make that careful preparation which leads to succinct and forcible argument. But a very short time ago, called by my professional duties, I was in the State of Colorado and the Territory of Utah, and there received the urgent request that, representing an industry I was glad to represent when in the Congress of the United States, I should come here to present this matter to the Comptroller of the Treasury.

But I take heart of hope from several causes. My associates, some representing constituencies and others representing clients, as I know from conversations with them, have had ample time for preparation, and I myself have derived from interviews had with them during the day that I have been here most important and valuable aid. And I feel further encouragement from the fact that this hearing is before you, sir, recognizing as I do in you a brother lawyer, learned in the profession and with that extended experience that prompted you to be called to this high position by the Chief Executive. I know as well as I know anything that in the deliberation which you will give to this matter, before coming to final judgment, there will be everything of fairness, and that there will be nothing that will be derived from prejudice or that will be based upon conjecture. Trusting thus implicitly in you, Mr. Comptroller, and relying upon the aid which I know I shall receive from my learned associates, I take heart of hope and do not for a moment despond of the final outcome.

THE QUESTION BEFORE THE COMPTROLLER.

This matter comes before you, as I have this moment ascertained, on a letter from the Auditor of the Treasury, dated the 17th of July,

and addressed to you in your official capacity. I will take the time to read it as much for my own information as for any other purpose, as it has just come to my hand.

I have the honor, in compliance with section 8 of the act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1895, and for other purposes, approved July 31, 1894, to report that the claim of the Oxnard Beet Sugar Company, of Grand Island, Nebr., for the bounty on sugar manufactured and produced by said company prior to August 28, 1894, amounting to $11,782.50, has been received from the Commissioner of Internal Revenue and examined in this office.

I have decided to allow the claim and to certify the amount for payment out of the appropriation of $238,289.08 for bounty on sugar approved March 2, 1895.

The claim is herewith inclosed for your consideration. I have suspended action in this case pending your direction.

Respectfully, yours, E. P. BALDWIN, *Auditor*.

Accompanying this communication I find first, on Form 301, furnished to beet factors by the Treasury Department, the claim of the Oxnard Beet Sugar Company for the production of sugar at Grand Island, Nebr., evidently properly and carefully filled out, and receiving not only the transmission but the approval of the collector of internal revenue for the district of Nebraska. With it I find also Form 316, furnished by the Department, being the return of sugar weighed, also carefully prepared and transmitted. The matter before us then is the account for sugar made between July 1, 1894, and August 28, 1894, by the Oxnard Beet Sugar Company, of Grand Island, Nebr., and does not arise on a warrant drawn in their favor coming to you for counter signature.

My attention has just been called to a communication, which I have not had the opportunity to read, dated the 2d day of August, addressed to the Comptroller of the Treasury Department and emanating from Mr. Dodge, Assistant Attorney-General. What the contents of the communication may be I do not know. I understand, however, that Mr. Dodge, of the Attorney-General's Department, has been directed by the Attorney-General to assist your honor in the legal investigation of this matter. His communication will undoubtedly be fully considered by my associates, and it would be considered and commented upon by myself did the time permit me to give it examination.

The COMPTROLLER. I wish to say that I received the communication only last night.

Mr. MANDERSON. I understand your honor has just received the document.

THE EQUITIES INVOLVED THAT CAUSED THE LEGISLATION IN QUESTION.

I said in opening that this is a matter of magnitude to the people of Nebraska and that it is one of grave importance to the people of the United States. I believe no case has ever been presented to any tribunal, no matter what its grade or what its composition, that embodied greater, broader, clearer, and more comprehensive equities than the case at bar. I wish the excessive heat and my regard for saving of time did not prohibit that I should go at length into the historical features of the sugar question. It would be well to present them, for I do not believe that you, sir, whose lines have been cast in other grooves than my own, whose life has been spent in a different locality, where it is not a vital question, appreciate what it would mean to this country to produce in those sections of the land adapted to sugar production a fair proportion if not all of the sugar that it consumes.

True it is that you sit here to pass upon legal questions. You are here, as we claim, to construe statutes; but in the construction of statutes and in coming to conclusions under their construction, courts, like individuals, look frequently to the motives that actuated the legislative body. Now, for a moment at least, let us glance at some of the reasons that prompted the sugar legislation in the Congress upon which this claim rests.

Under that system of protection in which I so firmly believe and in which the great mass of the American people so firmly believe, notwithstanding their political affiliations, protection to sugar has been extended almost from the beginning of the Government. Did time permit, I might read to you by the hour the arguments that have been presented by leading public men of all parties in favor of the encouragement by every possible lawful method of the growth of sugar in this country. The experiment of protection by way of customs duty obtained for many years. In 1890 we found this condition presented: A surplus in the Treasury beyond the needs of the Government and a demand for the cutting down of the income derivable from customs duties. By the act of 1890, called the McKinley law, sugar was made free, and in lieu of the customs duty a bounty of 1¾ cents per pound, or of 2 cents per pound, depending upon the saccharine strength, was given to those who would produce domestic sugar. The reasons for such action are obvious; they are well known, and I shall not take the time or weary you by reciting at length why it was that the bounty of the McKinley law was thus granted. By the bounty it was proposed not only to increase the production from sugar cane, but, following the example set to us by all of the important nations of Europe, adapted by reason of their soil and climate to the cultivation of the sugar beet, it was proposed to give an impetus to the growth of the beet and the product of sugar therefrom. What was the result? I speak by the book and from personal knowledge as well in telling you what was the result in the section of country in which I live. It was known from experiments had by German chemists that the soil of the West was better adapted to the development of this sun plant, this sugar plant of the North, than any other part of the known world. The soil had the ingredients, the sun had the vivifying power that would inevitably produce a greater degree of saccharine matter in the beet than it was possible to obtain in Germany, France, or any of the countries abroad which had been accustomed to export sugar to us. It was manifest that by reason of other conditions—the increased cost of labor, the immense amount of money necessary to permit one to embark in this industry, which could not thrive and prosper under the protection of a moderate customs duty—something more and something greater than customs duty was required, and the Government held out to those people the promise, the solemn legislative pledge, that if they would embark upon this industry, if they would invest the enormous amount of money necessary to produce the result desired, there should be paid to them from the Treasury of the United States the 2 cents per pound bounty of the McKinley law.

The gentlemen who stand at the head of the great enterprise in Nebraska, the Oxnard brothers, four in number, had devoted all the years of their lives to the study of this question abroad. One of them had become one of the most expert chemists in the country; others of them had investigated the matter of the machinery necessary for the production of sugar from beets, and the practical parts of the busi-

ness. They knew well the processes of growth and production. They, with those who were associated with them, had the immense amount of money necessary to embark in the enterprise. They built first a factory at Grand Island, Nebr., from which the statement demanding your action emanates, and afterwards at Norfolk, Nebr., erected a sugar plant. They put in each $500,000 in round numbers, investing in the factories alone $1,000,000 because of and resting upon this legislative promise of the Government of the United States.

That promise of the Government, constituting, as I claim, as solemn a contract as can be made between a nation and a citizen, was one that was to continue for a term of years. It provided that, commencing the year of the passage of the bill and continuing until the year 1905, this bounty should be paid to those who produced sugar, either from cane, sorghum, or the beet. Did these people have the right to rely upon this legislative statement of the Congress of the United States, approved by the President? If they could not rely upon it, on what could they rely? Certainly the pledge of the Government should be as binding and reliable as that of an individual. They made this large money investment; and what was the next step? At enormous expense, at a tremendous outlay, they had to educate a class of people not apt to take quickly to novel experiments. They had to educate the farmers in the vicinity of the factories in the cultivation of this new plant. They imported their seed from Germany, and advanced the seed to those farmers. They started their schools of instruction. They sent out their agricultural educators to teach the farmers how to grow the beet which would contain the maximum amount of saccharine matter. Not only that, but under the direction of the legislature of the State of Nebraska a department of agriculture was instituted in the State University; experimental schools were started with actual cultivation of the soil by employees and pupils of the State. Men of learning were induced to investigate the question, and I have before me one of a series of bulletins, known as the sugar-beet series, issued from the agricultural experiment station of the University of the State of Nebraska. At a great cost of money to individuals and to State, under the impetus and momentum of this law, the effort was made to advance the industry that meant, as I believe, a greater boon to the farmers of this country than any other that could be granted by either General or State Government.

The experiment went on through the years after 1890. The bounty under the McKinley law accruing was paid without demur. No voice was raised against it in Congress; no man appealed to the courts; no man even addressed an official of the Treasury Department to try to prevent the payment of the bounty thus solemnly pledged by the Government of the United States; and through the years from 1890 to 1894 the bounty was paid to these people. Was it to their financial benefit, to their pecuniary advantage alone? No. Did it give them a profit? No. For the fact is, sir, that the beet-sugar factories have thus far been maintained at a loss to those who embarked their money in them, notwithstanding the fact that a portion of these bounties have been received from the Government. Notwithstanding the amounts received, and even with the amount of money now due the beet-sugar people of Nebraska, small in comparison with that which is due the cane-sugar growers of the South, great loss has been theirs from their embarkation on this experiment. I do not believe that that loss would *have continued* to them had the McKinley bounty been kept upon the *statute* books, as it was agreed that it should be, until 1905. And

why? Let me for a moment give the reasons way. First, because the farmers of that section, intelligent, desirous of advancing their own interests, were quite quick to learn after they were willing to commence the cultivation. They have already greatly increased the sugar-beet acreage, and if the industry is allowed to live will continue to increase it and require more factories to handle it year after year.

In this year of grace—and thank God it is a year of grace and comparative plenty for us in the West, following the great drought of last year, which put us in the slough of despond—there are 9,000 acres of beets under cultivation by reason of the contracts made with the farmers that they should receive $5 a ton for their beets, which contracts were made in view of the bounties promised. Profitable, I say, the industry would have been in the future had the McKinley bounty law continued, because of that American ingenuity and inventive skill in which we take such pride and of which we boast, which was making and would make great improvements upon the old methods, and many of the laborious hand methods were being, and would continue in greater degree to be, supplanted by the Yankee machines that sometimes seem to show an intelligence akin to that of man himself.

But we fell upon the unfortunate year 1894, and notwithstanding most vigorous efforts in the Congress of the United States to save this industry and prevent it from being strangled before it was fairly born, the Congress, on the 28th of August, 1894, repealed the bounty clause of the McKinley law and left those citizens with their contract violated, with this industry threatened with destruction, and with the investment they had made under the invitation of the Government likely to be wiped from the face of the earth. It was an unrighteous, it was an unjust, it was almost an unlawful exercise of Congressional power. I need not refer to the causes that induced it. They are political largely, and I certainly do not wish to enter into any political discussion at this time.

These people found themselves thus worsted, thus "buncoed" in their transaction with the Government of the United States. They appealed to Congress. They said, "We recognize that you have the right to do this unrighteous thing, but for the sake of fairness and honest dealing do us at least a modicum of justice." Under the license issued to the Oxnard Sugar Company at Grand Island on the 1st day of July, 1893, beets were grown, sugar was produced, and the bounty partly paid. They came to the 1st day of July, 1894. There was pending in the Congress the Wilson bill, so called. It was hardly believed that the final outcome of that measure would be the repeal of the bounty provision of the law. No Democrat in the Senate of the United States believed for a single moment that the bill which went to the House of Representatives would not be changed in the conference between the two Houses and brought back with a continued but perhaps a diminishing bounty, or some equitable and fair compromise at least to those citizens who had thus invested their wealth on the invitation of the Government. The history of the bill, in the conflict which ensued between the two Houses, is a matter of notoriety. It was made a law with all its imperfections by forcible and unusual methods; it was born by a sort of Cæsarian operation, and unnaturally brought into life. It suited no one.

The sugar producers found themselves then with all bounty wiped from the statutes. Disheartened, and with ruin staring them in the face, they started at the next session of Congress to try to save something from *the dreadful wreck.* Uniting with the sugar planters of

Louisiana, those who have the larger stake here, the beet sugar factors made strenuous endeavor, appealing to the conscience of the Congress of the United States to do at least half justice. They did not even get that. In recognition of the fact that the sugar produced between the 1st day of July, 1894, and 28th day of August, 1894 (when the Wilson law became operative and the McKinley law was repealed), was from beets produced in 1893, from sugar made under the McKinley law, and that it was manufactured under a license under the seal of the Treasury Department dated July 1, 1894, sugar growers and producers did get from the Congress of the United States the agreement by law that they should be paid the bounty of 2 cents per pound of the McKinley law for the small amount of sugar thus produced. The appropriation of $238,000 is the full amount due to all who produced sugar between the 1st day of July, 1894, when the license was issued, and the 28th day of August, 1894, when the McKinley law was repealed.

What else did they get? By the terms of the Wilson law a duty was reimposed on sugar, and the effort was made to equalize somewhat for that year a bounty with the duty, and Congress agreed that they should be paid for sugar produced from the crop of 1894 eight-tenths of 1 per cent per pound, instead of 2 cents per pound, which they would have received under the McKinley law. They have gone on under that renewed promise of the Government of the United States; they have gone on under that solemn legislative compromise by the Congress of the United States; they have produced the sugar from the cane and beets that had been planted, and they come to you, sir, holding to some extent the purse strings of this Government, and say to you: "Pay us what the Government owes." That is our mission here to-day, and I tell you, Mr. Comptroller, that if by any method in Treasury Department or in court this boon shall be denied disaster beyond description, misery beyond the power of painter, will certainly ensue. You should avert and not precipitate that ruin.

I leave to my friends from the sugar-cane State of Louisiana to tell you what it means to them. I know what it means to the beet-sugar producing section of the West. I could produce to you, did time permit, letter after letter written by the farmers of Nebraska, some of whom have been in this industry and others proposing to embark in it, begging and entreating that nothing be done that will disturb the continuance of these beet-sugar factories. I believe as fully as I believe in my own existence that if the bounty of the McKinley law had been continued, instead of two factories in the State of Nebraska there would be numerous others; that instead of 9,000 acres of beets, bidding fair to produce this year at least 12,000,000 pounds of sugar, there would be three or four times that acreage, producing three or four times that amount of saccharine substance. But that grand result apparently was not to be.

What we plead for now is that at least these factories, which mean so much to us, shall be permitted to eke out an existence, even if it be a miserable one. I wish I could have taken you with me in Nebraska last fall during the campaign, not only that I might have had the pleasure of your society, and heard you plead the cause of the Wilson law, and heard you air your views upon finance and the tariff, but that I might show to you an object lesson. We had a drought there in 1894, the like of which has not been experienced in all the West since it has been settled. I traveled mile after mile through a scene of desolation; the grass burnt; the corn, which by the hot winds of early July had been cooked in the ear, standing worthless even for fodder; the

small grains destroyed; and yet, sir, even in that year of dreadful misery this underground plant, this creature of the sun, while it did not thrive as it would in an ordinary year, lived and bore fruit to the farmer. Mile after mile of the side tracks of railroads were filled with the empty cars that had no mission to perform. The only crop moving to the market and giving to the farmer some small compensation for his toil was that of the sugar beet, which, with its top blasted by the wind, still throve under the protecting soil, and sugar was produced from it, as will appear to you by these statements and by some other documents which will come before you hereafter for consideration and, as I hope and expect, for your allowance.

Sir, wipe out this industry and you administer to the West almost a deathblow to its agricultural interests. We are meeting rivals and competition on all hands; we are meeting new fields of production in other lands in the crops we produce, and by some method we must save ourselves. In order to go on with our progress and advancement as a nation we must by some method find new fields of production for ourselves, and even if we can not enter foreign markets with the sugar we produce, at least save to ourselves the vast sum, ranging between $100,000,000 and $200,000,000, which we send abroad to pay those who produce sugar from the beet fields of Germany and Continental Europe and from the cane of the tropics. But I must not be betrayed into too much of this line of argument. It is a subject upon which I feel deeply and to which I have given much study and thought. I could go on and present to you most cogent reasons why in equity and good conscience, in fairness and a desire for the advancement of the best interests of this Republic you should shrink from any assumption or usurpation of power and should place yourself in such position as to be satisfied beyond a reasonable doubt, as in the trial of a criminal, before you take the course which it has been suggested will be pursued in this case.

THE POWERS OF THE COMPTROLLER OF THE TREASURY.

Let me come to that which is the grave question before us to-day. We are here to try to construe your powers as the Comptroller of the Treasury; not to limit them; not to give the statute that defines your powers any strained or technical construction. We do not believe it is your desire to enlarge your powers. The official who attempts it brings simply additional trouble, greater cares, and graver responsibility upon himself. I do not believe, Mr. Comptroller, that you are that make-up of man who desires to assume any position or any responsibility which you do not conscientiously believe is devolved upon you by law. I need not go at length with you through the statutes to ascertain what your duties have been and what they are. Under the law as it stood until the passage of the legislative appropriation act of July 31, 1894, you were, among other things, to "countersign all warrants drawn by the Secretary of the Treasury warranted by law." In the so-called Dockery Act, which is a part of the legislative appropriation law passed on the 31st of July, 1894, apparently rather than really the definition of your duties was changed. I do not know that the change was a very material one, and as I have read this hasty piece of legislation, tacked improperly on an appropriation bill, I have found myself somewhat befogged by its provisions. Let us see what were some of the apparent changes and modifications of law. In the first place, I find by section 4 of the act that many offices were

consolidated; that the offices of Commissioner of Customs, Deputy Commissioner of Customs, Second Comptroller, Deputy Second Comptroller, and Deputy First Comptroller of the Treasury were abolished; and it was provided that the Comptroller should thereafter be known as Comptroller of the Treasury. Section 4 continues:

He shall perform the same duties and have the same powers and responsibilities (except as modified by this act) as those now performed by or appertaining to the First and Second Comptrollers of the Treasury and the Commissioner of Customs; and all provisions of law not inconsistent with this act, in any way relating to them or either of them, shall hereafter be construed and held as relating to the Comptroller of the Treasury.

This, then, was the creation of your office. It was a consolidation of many into one. Now, let us look for a moment at the manner of settling accounts and what were the duties with which the officials of the Treasury were charged under this new law, which seems to be that that created you in your present position. I read from section 7 as follows:

The Auditor for the Treasury Department shall receive and examine all accounts of salaries and incidental expenses.

In order to save time I shall not read all of the section, but come to this material part:

And relating to all other business within the jurisdiction of the Department of the Treasury, and certify the balances arising thereon to the division of bookkeeping and warrants.

Here is an account which would at first glance seem to be "business within the jurisdiction of the Department of the Treasury." I do not know whether this account, before its transmission to you by the Auditor, passed through the division of bookkeeping and warrants.

The COMPTROLLER. No, sir; it did not.

Mr. MANDERSON. It came from the Auditor direct to you?

The COMPTROLLER. That was his action. His construction of the new statute came to me under section 8.

Mr. MANDERSON. I am about to read that section. So the account comes to you approved by the Auditor of the Treasury Department as being in all respects a compliance with the law, and it comes to you, as he says in his letter, under section 8, which I shall now read:

The balances which may from time to time be certified by the Auditors of the division of bookkeeping and warrants or to the Postmaster-General upon the settlements of public accounts shall be final and conclusive upon the executive branch of the Government.

If we stopped there it would look as though the Auditor for the Treasury was the final and conclusive authority upon the executive branch, which would, of course, include yourself. But we go on:

Except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department to which the account pertains, or the Comptroller of the Treasury may within a year obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the executive branch of the Government.

So we have this position apparently under the law, and am I to take it that this matter is before you under that provision?

The COMPTROLLER. No, sir.

Mr. MANDERSON. You did not then call for it?

The COMPTROLLER. No, sir. It comes under another provision.

Mr. MANDERSON. Then it was apparently sent to you by the Auditor for the Treasury and not called for by you under the provisions of section 8?

The COMPTROLLER. Yes, sir. It was sent here under another clause, which you will find further on.

Mr. MANDERSON. I will continue the reading.

Upon a certificate by the Comptroller of the Treasury of any differences ascertained by him upon revision, the Auditor who shall have audited the account shall state an account of such differences and certify it to the division of bookkeeping and warrants, except that balances found and accounts stated as aforesaid by the Auditor for the Post-Office Department for postal revenues and expenditures therefrom shall be certified to the Postmaster-General.

Will you give me the part of the section to which you refer?

The COMPTROLLER. It is the third paragraph, and begins:

All decisions by Auditors making an original construction or modifying an existing construction of statutes, etc.

Mr. MANDERSON. I have marked that clause and intended to read it.

The COMPTROLLER. The account comes to me under that clause of section 8.

Mr. MANDERSON. That clause reads:

All decisions by Auditors making an original construction—

And I take it this is claimed to be an original construction of the statute, because it for the first time construes the act of March 2, 1895—

or modifying an existing construction of statutes shall be forthwith reported to the Comptroller of the Treasury, and items in any account affected by such decisions shall be suspended and payment thereof withheld until the Comptroller of the Treasury shall approve, disapprove, or modify such decisions and certify his actions to the Auditor. All decisions made by the Comptroller of the Treasury under this act shall be forthwith transmitted to the Auditor or Auditors whose duties are affected thereby.

I will read section 9:

This act, so far as it relates to the First Comptroller of the Treasury and the several Auditors and deputy auditors of the Treasury, shall be held and construed to operate merely as changing their designations and as adding to and modifying their duties and powers, and not as creating new offices.

I have now read the different processes by which accounts are to be audited and settled in this Department. Having reached your approval, then you pass it to the Auditor. The Auditor, on receipt of the account thus approved by you, I take it, transmits it to the Secretary of the Treasury by reason of the provision of section 11, which I will read:

The COMPTROLLER. He does not transmit it under that provision. He transmits it under the authority of the section you have read.

Mr. SEMMES. The Auditor certifies it to the division of bookkeeping and warrants.

Mr. MANDERSON. Does the account pass through that medium to the Secretary of the Treasury?

The COMPTROLLER. Yes; the division of bookkeeping and warrants is an office under the Secretary of the Treasury.

Mr. MANDERSON. Then, having passed to the Auditor with your approval, it is transmitted to the division of bookkeeping and warrants, and is then transmitted as a warrant to the Secretary of the Treasury.

The COMPTROLLER. That is to say, it is prepared in that division for his signature.

Mr. MANDERSON. I understand. Then we have gone from the account filed through the processes of approval by the Auditor and transmission by him to the Comptroller, approval by the Comptroller, transmission to the bureau of bookkeeping and warrants, and then its transmission to the Secretary of the Treasury in the form of a warrant to be paid. That brings us then to the final act by you of countersigning the warrant.

Then I find the following provision of law, which is different in language, although perhaps not different in intent, from the old law I referred to authorizing the Comptroller of the Treasury to countersign a warrant drawn by the Secretary of the Treasury "warranted by law":

All warrants, when authorized by law and signed by the Secretary of the Treasury, shall be countersigned by the Comptroller of the Treasury, and all warrants for the payment of money shall be accompanied either by the Auditor's certificate, mentioned in section 7 of this act, or by the requisition for advance of money, which certificate or requisition shall specify the particular appropriation, etc.

So there apparently is the process by which accounts of a general character pass under the inspection of the accounting officers of the Treasury and reach at last the form of warrants signed by the Secretary of the Treasury and transmitted to you for countersigning. The course that should be pursued with accounts such as this under the sugar-bounty law we will consider hereafter.

Now, nothing, perhaps, is more difficult to point out, with respect to an executive official, the exact line where the limited judicial functions incident to the executive place cease and the ministerial powers begin. But I am ready to admit at the outset that in passing upon accounts you act in a quasi-judicial capacity; I am ready to admit that as to this account you will act judicially—I had almost said judiciously, and I do not believe I will take back the word—that you will act judicially and judiciously with the claim, and when the warrant shall come to you, and you will be exercising not only ministerial, but, as I believe, under the Dockery law, limited quasi-judicial functions.

The COMPTROLLER. On the countersignature of the warrant?

Mr. MANDERSON. I am inclined to think so, sir, but I will speak of that later.

The COMPTROLLER. That is stronger than it is usually stated.

Mr. MANDERSON. I am willing to admit that much for the sake of the argument, because it does not change my position in the least, as I will hereafter explain.

The COMPTROLLER. That is stronger than is usually contended for.

Mr. MANDERSON. I say so because of the language, which is:

All warrants, when authorized by law and signed by the Secretary of the Treasury, shall be countersigned by the Comptroller of the Treasury.

I am ready to admit, I say, for the sake of this argument, that even in respect to counter signature you are exercising a quasi-judicial power or function, and before you countersign the warrant you are to decide (it being signed by the Secretary of the Treasury) that it is authorized by law.

Now, what does that authorization by law mean? It means that you shall find and determine that it has passed the scrutiny and has received the approval of the Auditor and of yourself. So the quasi-judicial function thus exercised is so slight that it is practically *ministerial*.

The COMPTROLLER. I agree with you.

Mr. MANDERSON. If we are correct in that proposition, then we have struck, as it seems to me, a very material departure from the old law. No longer, then, are you in the position that you were under the old act, which required that you should find that a warrant was warranted by law before you would countersign it.

The COMPTROLLER. Do you think there is any difference between "warranted by law" and "authorized"?

Mr. MANDERSON. None whatever in the distinction of terms, but the old statute did not contain these processes of advance in the settlement of an account.

The COMPTROLLER. This does not come up as a process of advance, but on final settlement.

Mr. MANDERSON. Of course this claim as made does. But I am speaking now of the warrant finally to come to you under the Dockery law. It comes up for final action, for you to look at it and say, "This is a warrant based upon an account that the Auditor and the Comptroller have approved, and therefore, being thus approved, it is authorized by law." Under the old law, when the warrant was brought to you for counter signature, you had full right to go into all the law in order to ascertain whether it was warranted, while under the new Dockery Act you are simply, by reason of the language, "authorized by law" to pass upon the question whether you yourself and the Auditor have approved the account on which it is based.

Under either of these laws, however, the old or the new, I submit to you that your power of ascertainment, either under the old language, which required that you should find that the warrant was warranted by law, or under the new language, which provides that you shall revise and correct the action of the Auditor and find afterwards that the warrant is authorized by law, your powers are to construe and never to nullify the law. To construe means to preserve, not to destroy.

This claim is before you, coming from the Auditor under the new or Dockery law, on an "original construction" of a statute. That language, on its very face, clearly shows that it is only the construction or interpretation of the law that is left to the Comptroller, not the validity of the law, not the constitutionality of the law. This power to construe, interpret, or expound the law given by the Dockery Act is not new and does not add to your former powers; in fact, the provision as it now stands seems to be a contraction of your power, because the power to construe or interpret seems to be now limited to cases where the Auditor makes an original construction of law or modifies an existing one. It was general theretofore, and extended to all cases. There is no power in you to declare a law invalid. The Comptroller is only to consider the question as to whether the Auditor's original construction of the law was the proper construction. If Congress had intended to allow the Comptroller power under this to attack the law itself as invalid, or as unconstitutional, words would have been used to express it. But it never will and it never has granted an executive officer such power.

As to the Comptroller's power under the provision which now says that "all warrants, authorized by law and signed by the Secretary of the Treasury, shall be countersigned by the Comptroller," the signing of the warrant by the head of the Department or Secretary controls the Comptroller if the claim has been acted upon under the requirements of the prior section of the act. His counter signature is perfunctory, *finding, as he must,* simply that he or the Auditor, or both,

have passed favorably upon the claim on which it is based. It is so held under the old law of stronger language by Attorney-General McVeagh. (17 Opin., p. 237.)

In that opinion three questions were left to the Attorney-General, the third being, "Whether, as claimed by the Comptroller, the question of the legality of warrants or requisitions is wholly within his jurisdiction, he being the only officer who countersigns warrants, and whether the Secretary of the Treasury is legally bound by the opinion of the First Comptroller upon this point."

Answered in the negative, and the Attorney-General said the Comptroller—

contends, I understand, that the clause "to countersign all warrants warranted by law" requires him to examine into the legality of warrants granted by the Secretary, and by his counter signature to certify to that legality; in other words, that the duties of the Comptroller are the same as to matters which have already received the decision of the Secretary of the Treasury as they are to accounts which pass through him from the Auditor to the Secretary. And, furthermore, he contends that by implication his decisions as to his counter signature are as binding upon the head of the Department as his decisions are under section 191 of the Revised Statutes, which makes his decisions on balances final and conclusive. I can not assent to the proposition that a subordinate officer, created by statute, can do any act binding upon the head of his Department until that force is expressly given to his decisions by plain and unambiguous law. It is suggested that the expression "which shall be warranted by law" is pregnant with all that is expressed as to the binding effect of balances certified by him.

The Attorney-General goes on to explain what the purpose of the counter signature was in that case, and then says:

If the law meant that the Comptroller is to decide * * * and the Secretary of the Treasury is to have no discretion but simply to register the decrees of the Comptroller, the language of the law would have been more apt if it had directed the Comptroller to sign and the Secretary of the Treasury to countersign. * * *

The Attorney-General then quotes 16 Court of Claims, Real Estate Savings Bank *v.* Pittsburg, where Richardson, Justice, said, after citing section 191 of the Revised Statutes:

In other respects the Comptrollers are as much subject to the rules, regulations, and directions of the Secretary of the Treasury, and as much bound to obey and be governed by them, as are all other subordinate officers in the Treasury Department.

And finally the Attorney-General quotes volume 5 of Hamilton's Works, page 77, to the effect that countersigning means that the officer shall have an opportunity to observe the conformity of receipts and payments with the course of business as it appears in the accounts.

In the Gibbs claim (5 Opin.) the principle contended for is stated by Reverdy Johnson in this language:

Both Houses of Congress having resolved that the claim was provided for by the act of 1832, and the House having done so again at the last session, after the executive department had, more than once, maintained a different doctrine, I am of the opinion that a proper deference to the legislature demands that its construction should be adopted. That a claim should be rejected because Congress had not, in its opinion, provided for it, and the claimant be referred to the latter [Congress] for relief, and going there be referred back to the Executive by Congress, because in its opinion it had provided for it by existing law, and that it should still be disallowed, would, in my opinion, be a reproach upon the justice of the Government, which it is not only in the power but the duty of the Executive to prevent.

This points sharply to what transpired in the celebrated Carmick-Ramsay Case (which I will again refer to), to wit, that Comptroller Medill resigned and gave way to his predecessor, who found for the *claimants*, but died before his finding was recorded, and in turn Comptroller Taylor found for the claimants.

Take this case: July 5, 1832, Congress passed an act requiring and directing the Secretary of the Treasury to pay the State of Virginia certain judgments. It also required the accounting officers of the Treasury to liquidate and pay Virginia certain other claims. (4 Stat. L., p. 563.) It appears that the Treasury officers did not interpret the act to please Congress, whereupon Congress gave its interpretation in 1835 and again in 1848 (9 Stat. L., p. 297), and yet the Interior Department held the matter up. In 1849 Reverdy Johnson gave it as his opinion that the acts of Congress were "to be considered as legislative interpretations of the act of 1832, and as the expression of an opinion by Congress, with whom the propriety of paying the claims altogether rests. * * * I think this should be and is binding on the Executive." (5 Opin.)

No act has ever been passed that gives the Comptroller of the Treasury, or any other executive officer, the right to pass upon the constitutionality of a law. Congress has never been guilty of any such an absurdity. It would be an abrogation of its own rights and an encroachment upon the powers of that great coordinate branch of the Government, the judicial power. I believe that if the Congress of the United States had, in express terms, said the Comptroller of the Treasury, or any other executive officer, shall pass upon the constitutionality of a statute directing him to perform a certain duty, the Supreme Court of the United States would have said that the Congress of the United States could not delegate such power. But I need not enlarge upon that proposition.

Now, what may you do as to accounts? You may adjust an account under authority or under warrant of the law or a law. Take either phrase you please. You may ascertain balances under a law or under the law; you may ascertain differences under the law or under a law. In short, having found upon the statute books a law, you may construe it, you may expound it, but you can not veto it, you can not kill it. It is not in the hand of an executive officer that the Constitution of the United States and the framers of our republican government placed the power to act thus.

HOW LAWS ARE CREATED.

Let us see how a law is created, for in the very nature of things, one must, in the argument of this question, get to that which is elementary and fundamental. It may strike a listening lawyer as a little absurd that a man should appeal to the ground work and foundation of the Republic, with which we are all so familiar, and yet it will not do for us to depart from their consideration. The unfortunate thing is that we do not often enough appeal to them and consider them. How is a law created? Being introduced as a bill, it receives the consideration of the two Houses of Congress by the forms that are familiar to us, by reference to committees, by passing both Houses and receiving the signatures of the presiding officers. Take this law, conceived and born in the manner I have heretofore described, even it received all the formal requirements of the law making authority of the Constitution of the United States. The bill, in its numerous forms, went to the proper committees of the two Houses. The question of the constitutionality of its provisions, particularly the question of the constitutionality of the section in question, revivifying in part the McKinley bounty law, passed the scrutiny of those committees, and the question of its constitutionality and the constitutionality

of all bounties was debated upon the floor of both Houses. In the Senate particularly there was both length and strength of debate upon that question. Congress is certainly the proper authority to debate and consider whether in passing a bill it is exercising power within its constitutional limit. It did in this case, as it is presumed it usually does in every case. Then what? Having passed the two Houses, it went to the President of the United States.

Time was, and it may come again, when learned men advocated that the veto power of the President of the United States should be limited, and was by the Constitution designed to be limited, to his consideration of the constitutionality of an act, and however much he might differ with the law making power as to the advisability of the law, he should not veto it unless he found it was unconstitutional or that by the record it was passed by unconstitutional methods. I quote from Justice Miller on the Constitution of the United States, page 174:

> It has been contended that the only proper occasion for the President to deny his approval by a message to Congress, refusing to sign a bill, is when the bill is not, in his judgment, within the constitutional power of the Legislature. In such case it has been thought to be his duty to interpose his objection, and the doctrine has been advanced with much earnestness that on no other account is he justified in setting up his opposition to the more popular legislative branch of the Government.

But we have enlarged that limit. Vetoes have come upon us thick and fast of late years, some of them of a desirable quality, I must admit. But the President of the United States never approves a bill that has passed the two Houses of Congress without first considering the question whether the law proposed is within the power granted to Congress and to him by the Constitution. He did it in this case, for Grover Cleveland is not a man who neglects duty when it comes to the consideration of the acts of the Congress of the United States. He, the Chief Executive; he, the creator, with the advice and consent of the Senate, of every official in this Department; he, the supreme head, has said this law is constitutional and has approved it as such.

Are you to override his decision thus expressed by his approval of the bill? Shall the created be greater than the creator? It seems to me that if there were no other reason under the heavens, and if judicial power vested in every executive officer of the Government of the United States, the fact that the Chief Executive of this nation has declared the law constitutional should work as an estoppel upon all others. When he has vetoed a bill or has approved it, he has exhausted his power of the consideration of its constitutionality. Can it be possible that the power thus exhausted by the President can afterwards be used by one of his subalterns?

DIVISION OF POWER.

I say it is well to turn to fundamental principles. This Government of ours we are often told is composed of three coordinate branches, the legislative, the executive, and the judicial—the legislative to make the laws, the executive to enforce or execute the laws, and the judicial power to construe. Yet it is a fact that to some limited degree these different departments at times partake of the nature of each other. At times the legislative department partakes of the executive power. I need not mention the circumstances, but notably one is when the Senate of the United States advises and consents to the appointments of the President. The President of the United States partakes to a

limited degree of the law-making power when he vetoes or approves a measure. But when a bill has been passed by Congress and when it has been approved by the Executive, and is upon the statute books as a law, then I submit there is but one authority that can nullify, that can destroy it. There can be no reconsideration of an approval by the President of the United States and no ex post facto veto, either in fact, by failure to execute it, or by manifesto declaring that he had made a mistake and that he ought to have vetoed it. When the bill becomes a law the only authority that can destroy its vitality, that can take its life, is the judicial power, and the Supreme Court of the United States alone can deal the death blow. No meaner court of all the judicial system can exercise that power. It is a law until the Supreme Court says it is a nullity, for the reason that its passage was beyond the constitutional powers of the Government vested in Congress.

We are told that the functions of these different departments are distinct and that their powers are equal within law. That nobody will deny. Its denial threatens danger. The destruction of the doctrine means the destruction of the Government of the United States. Distinct they are while equal, and one will tread upon the sacred ground of the right of the other with fear and trembling. If the time shall come when that is forgotten and there shall be invasion of the rights of any one by either of the others, then good-by, free government, and farewell, liberty.

Now let us go to fundamental principles for a moment. Turning to Sutherland on Statutory Construction, pages 2 and 3, I find he sums the matter up most clearly:

> The separation of the three distinct departments is deemed to be of the greatest importance; absolutely essential to the existence of a just and free government. This is not, however, such a separation as to make these departments wholly independent: but only so far that one department shall not exercise the power or perform the functions of another. They are mutually independent and could not subsist without the aid and cooperation of each other. Under the constitutions the legislature is empowered to make laws; it has that power exclusively; the executive has the power to carry them by all executive acts into effect, and the judiciary has the exclusive power to expound them as the law of the land. The functions of each branch are as distinct as the stomach and lungs in our bodies.

Baron Montesquieu, in his Spirit of Laws, says:

> When the legislature and executive powers are united in the same person or the same body of magistrates there can be no liberty.

Dr. Paley, the great philosopher, says:

> The first maxim of a free state is that the laws be made by one set of men and administered by another.

Blackstone says:

> In all tyrannical governments the supreme magistracy, or the right of both making and enforcing laws, is vested in the same man or one of the same body of men; and whenever these two powers are united together there can be no public liberty.

Says Chancellor Kent:

> When laws are duly made and promulgated they only remain to be executed. No discretion is submitted to the executive officer. It is not for him to deliberate and decide upon the wisdom or expediency of the laws. What has been once declared to be law, under all the cautious forms of deliberation prescribed by the constitution, ought to receive prompt obedience. The characteristical qualities required in the executive department are promptitude, decision, and force.

I would apologize for thus quoting from the A B C of the law but for the novel spectacle here presented that a subaltern executive official proposes to usurp the power of the Supreme Court and destroy a

law that his chief has declared to be a Constitutional law. Surely the occasion requires that we should revert to first principles.

Kent further says:

The judicial department is the proper power in the Government to determine whether a statute be or be not constitutional.

He then proceeds to show with what hesitation and caution they exercise such power.

I read now from Cooley on Constitutional Limitations, page 194:

The legislative and judicial are coordinate departments of the Government, of equal dignity; each is alike supreme in the exercise of its proper functions, and can not, directly or indirectly, while acting within the limits of its authority, be subjected to the control or supervision of the other without an unwarrantable assumption by that other of power which, by the Constitution, is not conferred upon it. The Constitution apportions the powers of government, but it does not make any one of the three departments subordinate to another when exercising the trust committed to it. The courts may declare legislative enactments unconstitutional and void in some cases, but not because the judicial power is superior in degree or dignity to the legislative.

I might read much of similar import, and nothing can be found to the contrary.

Mr. Comptroller, I have searched and my associates have searched for some authority, either in standard text-books or in reported and adjudicated cases, that declares the right in an executive officer to annul a law by passing upon its constitutionality. It may be that more vigorous search in remoter and more obscure channels would disclose that a court somewhere had so stated, but I do not believe it. I have even searched in the reports of the Comptrollers of the Treasury for such authorization. However high may be and is my opinion of yourself from every ground of personal acquaintance and from your well-established reputation, I think there have been men in that chair, your predecessors, your equals in ability and reputation, who have sometimes been disposed to magnify their place. Rumor has it that that has been the fact, but I am unable to find, even in such magnifying of the office, the contention or claim that the Comptroller of the Treasury under the authorization of any statute in the past—certainly not amplified, but decreased by the Dockery Act—has the right to pass upon the constitutionality of a law. If he should, if any executive officer shall do it, I submit to you that it is an invasion of the power of Congress; it is an infraction of the prerogative of the Chief Executive, which prerogative in this case he has exercised and which power he has exhausted, and, above all, it is a most hazardous encroachment, a most dangerous usurpation of the power which, under our framework of government, is lodged in the judiciary alone.

THE CARE EXERCISED BY THE COURTS.

When it comes to the consideration by the highest court in the land of the question whether an enactment of Congress, particularly one that has received the approval of the President, shall be examined as to its constitutionality, with what care do they pass to its consideration. The supreme judge of a State, on a State bench of highest resort, approaches the consideration of that question with diffidence and with distrust. The Supreme Court of the United States in every case that is reported where it has spoken of this great power, its *greatest* attribute, has declared that it is to be exercised with a caution and care which they give to the consideration of no other ques-

tion that may come before it. The question involving the constitutionality of a statute may be one insignificant in its results, but courts bring greater delicacy and caution to its consideration, limited as it is in its results, than they bring to the consideration of the construction of a law and the weighing of evidence where millions of property, aye, even where the life of a citizen, is at stake.

Let me read again from Cooley, pages 194 and 195:

It must be evident to anyone that the power to declare a legislative enactment void is one which the judge, conscious of the fallibility of the human judgment, will shrink from exercising in any case where he can conscientiously and with due regard to duty and official oath decline the responsibility.

* * * * * * *

In declaring a law unconstitutional a court must necessarily cover the same ground which has already been covered by the legislative department in deciding upon the propriety of enacting the law, and they must indirectly overrule the decision of that coordinate department. The task is therefore a delicate one, and only to be entered upon with reluctance and hesitation. It is a solemn act in any case to declare that that body of men to whom the people have committed the sovereign function of making the laws for the commonwealth have deliberately disregarded the limitations imposed upon this delegated authority and usurped power which the people have been careful to withhold.

In their hesitation at assuming this delicate duty, let me call your attention to the safeguards that they have thrown about themselves, the barriers they themselves have created to prevent the undue and uncautious exercise of this tremendous power.

First let me call your attention to the fact that they usually require a majority of all of the bench and not a majority of the quorum of the bench. All other questions are passed upon by argument to a quorum of the court, but when it comes to the question of the constitutionality of a law, when it comes to a decision as to whether they will override the coordinate department, they say, "No, no; let us have the full bench here and let us have a majority of all, that before trampling under our feet the law passed by the servants of the people we shall be fully assured that we are doing right."

Second. They require that the very point of unconstitutionality must be necessary to determine the case; a familiar principle. If they can decide the case on any other question, important or unimportant, vast or small, they seize it with avidity rather than take the grave responsibility of nullifying an act of Congress approved by the Chief Executive.

Third. It can not be raised by any parties whose rights are not directly involved. No stranger to the record can come in and say, "The act under which this right was attempted to be enforced is unconstitutional." Not only can no stranger come in and so say, but no party to the suit can so say unless his rights are directly involved in passing upon the question.

Fourth. No court, however high, will overrule the legislative will expressed by law on the ground that it is unjust and oppressive in its provisions or because it is supposed to violate the natural, social, or political rights of the citizen. The books are full of this doctrine. Judge Cooley has collected them on pages 203 and 204, and let me for a moment refer to them.

The moment a court ventures—

Says Cooley, commenting upon the cases reported in the notes—

The moment a court ventures to substitute its own judgment for that of the legislature, in any case where the constitution has vested the legislature with

power over the subject, that moment it enters upon a field where it is impossible to set limits to its authority, and where its discretion alone will measure the extent of its interference.

He quotes then from 2 Rawle, in Commonwealth *v.* McCloskey, wherein the court said:

If the legislature should pass a law in plain and unequivocal language, within the general scope of their constitutional powers, I know of no authority in this Government to pronounce such an act void merely because, in the opinion of the judicial tribunals, it was contrary to the principles of natural justice; for this would be vesting in the court a latitudinarian authority which might be abused, and would neccesarily lead to collisions between the legislative and judicial departments dangerous to the well-being of society, or at least not in harmony with the structure of our ideas of natural government.

Then, citing the case of Bebee *v.* State (6 Ind.) and many other authorities, he quotes from the opinion by Stuart, justice, in the Bebee Case, as follows:

All the courts can do with odious statutes is to chasten their hardness by construction. Such is the imperfection of the best human institutions that, mold them as we may, a large discretion must at last be reposed somewhere. The best and in many cases the only security is in the wisdom and integrity of public servants and their identity with the people. Governments can not be administered without committing powers in trust and confidence.

He then cites from 21 Ohio, Walker *v.* Cincinnati, as follows:

If the act itself is within the scope of their authority, it must stand, and we are bound to make it stand, if it will upon any intendment. It is its effect, not its purpose, which must determine its validity. Nothing but a clear violation of the constitution—a clear usurpation of power prohibited—will justify the judicial department in pronouncing an act of the legislative department unconstitutional and void.

Then I quote again from the text:

The courts are not the guardians of the rights of the people of the State except as those rights are secured by some constitutional provision which comes within the judicial cognizance. The protection against unwise or oppressive legislation, within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. If this fail, the people in their sovereign capacity can correct the evil, but courts can not assume their rights.

The COMPTROLLER. Does not that simply mean that the courts will not invade the legislative discretion?

Mr. MANDERSON. That is exactly what it means. It means that there must be the clearest possible violation of the Constitution, as some of the authorities express it, that the judge should be satisfied beyond a reasonable doubt in the exercise of this power that the legislature or the Congress has overstepped its constitutional functions.

Nor will courts exercise the power of nullifying laws because they are unconstitutional, because they appear to the minds of the judges to violate fundamental principles of republican government. Cooley then quotes from Chief Justice Chase in the license-tax cases reported in 5 Wallace:

There are undoubtedly fundamental principles of morality and justice which no legislature is at liberty to disregard, but it is equally undoubted that no court, except in the clearest cases, can properly impute the disregard of those principles to the legislature. * * * This court can know nothing of public policy except from the Constitution and the laws, and the course of administration and decision. It has no legislative powers. It can not amend or modify any legislative acts. It can not examine questions as expedient or inexpedient, as politic or impolitic. Considerations of that sort must in general be addressed to the legislature. Questions of policy there are concluded here.

Now, why do I invoke this principle? Why do I say that the courts *never declare* a law a nullity unless it is the clearest possible infrac-

tion of the Constitution by the legislative power? Why do I say that they will not nullify a law on the ground of unjust and oppressive provisions or because it is supposed to violate some natural, social, or political rights of the people? Why do I say that they will not nullify a law because in the opinion of the judges it violates some fundamental principle of republican government? Because essentially in this case now in hearing, pervading every mind that comes to deliberate upon it, is the all-absorbing question of the rights of the Government and its duty to its citizens in the matter of protection either by impost duty or by bounty. And I invoke it because I say that I, as a Republican, you as a Democrat, must in the consideration of this case throw out of mind and utterly destroy in mental consideration any political theories, if it is possible for human mind to accomplish that result. You and I may differ, I presume we do differ, upon the political question of the tariff. I am a protectionist of protectionists. I believe in protection by bounty and by duty as firmly as I believe in anything. I believe it is not only within the constitutional power of the Congress of the United States to thus impose duties and thus pay bounties, but I believe it is a bounden duty, in legitimate desire for the advancement of this country, that it should exercise that power to the utmost. I take it you, being of the opposite political faith, do not believe that. But I say that in the consideration of this question neither you nor I have the right to turn to our individual political views for its decision. We can not settle this question as we would one arising on the hustings. We must pass elsewhere. We must construe this instrument, this sacred fundamental law for individual guidance, by the language of the men who created it. We must construe it for executive or judicial guidance by the action of the highest court competent to decide, and you must not construe it, being a part of the executive branch of the Government, when your construction extends to the point of destruction, nullification, or wiping out of the law, because that is the province, the delicate, the dangerous duty of the Supreme Court of the United States alone.

Sixth. The authorities are abundant that the courts will not hold a law unconstitutional because it is opposed to the spirit of the Constitution. No theorizing will do; no branching out into the realms of speculation; none of that. Not what we think the Constitution ought to be; not what we should like it to be; not as we should like to have it construed by some strained process; not its spirit, but the actual literal translation of its terms. I say the opposition between the law and the Constitution must be clear and strong. I shall read only from the syllabus of the case, which I shall have occasion in the supplementary proceeding which arose under it to refer to at greater length. This is the case of The People of the State of Illinois *v.* Edward S. Salomon, County Clerk of Cook County, decided at the January term, 1868, of the supreme court of Illinois:

The opposition between the law and the Constitution must be clear and strong; otherwise the law will be upheld. The presumption that the legislature has committed an unwarranted act will not be indulged; the fact must be clearly established."

With these safeguards that the judiciary has thrown about itself, not imposed by the Constitution, but self-imposed, it seems to me an executive officer should hesitate to assume so grave a responsibility. Even if he believes that it is within his province, if courts so shrink from it, if courts so evade it, it seems to me no man in the executive department should assume it, even if he thinks he has such power.

NO PRECEDENT FOR POWER NOW CLAIMED.

I have said there is no precedent for this assumption of power on the part of any executive official. Mr. William Lawrence was at one time Comptroller of the Treasury. I do not know that I ever met him personally, but as I have looked through these volumes that contain the report of his decisions, I am struck with his great industry and with the evidences of his ability, and I think it is unfortunate that we have not had other Comptrollers as industrious. We have had others as able, but I do not believe many men in the Executive Departments have built up such monuments of industry as the First Comptroller's decisions in six volumes, prepared and published by Comptroller William Lawrence. He was disposed to enlarge the importance of his office, but even he never went so far or claimed the right to annul a law for unconstitutionality. I have looked in vain, as I have said, for any precedent. In the very excellent and able introductions to these different volumes, notably in his introduction to the first volume, on page 7 of the introduction and following, he comments with particularity and detail upon the duties of the First Comptroller under that provision of the law then existing, which I say was more forcible than the language in the Dockery Act, that he must find that the warrant is "warranted by law." And if your honor will glance, if you have not already done so, through this introduction, you will see how he lists and numbers the different questions that come before him, comments upon his duties; and in a case most voluminously reported, containing within itself a very large amount of unnecessary repetition, which makes its consideration extremely laborious, known as the Bender Case, reported on page 317 of the first volume, your honor will find in detail a consideration of the duties of the Comptroller's Office as it then existed, the duties of the First Comptroller, the duties of the Second Comptroller and the Secretary of the Treasury; but I say you will look in vain to find in these books any precedent for the proposition that an executive officer can thus invade the province of the judiciary.

I have referred to the case in 46 Illinois known as the Salomon Case. General Salomon was the clerk of Cook County. The South Park commissioners had a right, as they claimed, under the law to make an estimate for transmission to the county clerk of Cook County of the cost in the coming fiscal year for parks, and the law made it the duty of the county clerk, on his receipt of that estimate, to place on the tax duplicates the amount necessary to be collected by taxes for that purpose. Salomon received the estimates from the commissioners and refused to place the assessment necessary to collect the amount upon the tax duplicates that were to be transmitted by him to the tax collectors. The authority from which I read in 46 Illinois is the proceeding in which a mandamus was issued against him to compel him to act under the law, which he declared was unconstitutional. He did not act after the mandamus issued. He still refused. On the complaint of the attorney-general of the State of Illinois he was brought before the court for contempt of its process.

The COMPTROLLER. That is the case reported in 54 Illinois.

Mr. MANDERSON. I am glad to see that your honor has had occasion to look at that case.

The COMPTROLLER. I have not read the case; I have seen it referred to.

Mr. MANDERSON. The judge who issued the mandamus was Chief Justice Breese, a learned, accomplished, honest jurist. The decisions

written by Chief Justice Breese, constituting a part of the adjudications of the great State of Illinois, are among its choicest judicial ornaments. No man stands higher on any supreme bench than did Mr. Chief Justice Breese. I read first from the syllabus of the case:

Nor was it a sufficient answer in the proceeding for contempt in failing to obey the peremptory mandamus that the clerk had placed the books in the hands of the township collectors and so beyond his control, whereby it had become impossible to obey the writ, such action on the part of the clerk resulting from his original refusal to obey the law itself, he assuming to decide the law under which the board of equalization acted to be unconstitutional, and placing his refusal to obey it upon that ground.

Now mark it. Before the issuance of the mandamus he had sent the books to the collectors. When the mandamus came to him he tried, as he shows in his answer in the contempt proceeding, by every means in his power to obey the mandate of the court; he begged for the return of the books, that he might obey the order of the court, but the collectors refused. They said, "These books are in our hands under the law, and we have only until such a time to perform our duty. Time will not permit us to return them to you." He showed the vigorous efforts that he had made to obey the order of the court, as is shown in the syllabus and will be shown in the opinion. The syllabus continues:

A ministerial officer can not be allowed to decide upon the validity of a law, and thus exempt himself from responsibility for disobedience to the command of a peremptory mandamus, his disobedience to the law being the cause of his inability to obey the command of the court. It is the duty of a ministerial officer to obey an act of the legislature directing his action, not to question or decide upon its validity.

Nor was it any justification to the clerk in such case for his refusal to execute the law and his consequent inability to obey the writ of mandamus that by the action of other county officials a public sentiment and feeling were created against the execution of the law. which it was the duty of the officer to obey regardless of such considerations.

Now let me read from the opinion. Here is no dictum, but here is very forcible use of the king's English by a man who understood the full use of every word he uttered, and how aptly and forcibly it applies here:

The law under which this additional tax was imposed had passed the legislature under all the forms of the constitution and had received executive sanction and became, by its own intrinsic force, the law to you, to every other public officer in the State, and to all the people. You assumed the responsibility of declaring the law unconstitutional, and at once determined to disregard it, to set up your own judgment as superior to the expressed will of the legislature, asserting, in fact, an entire independence thereof. This is the first case in our judicial history in which a ministerial officer has taken upon himself the responsibility of nullifying an act of the legislature for the better collection of the public revenue, of arresting its operation, of disobeying its behests, and placing his own judgment above legislative authority expressed in the form of law.

To the law every man owes homage, "the very least as needing its care, the greatest as not exempted from its power." To allow a ministerial officer to decide upon the validity of a law would be subversive of the great objects and purposes of government, for if one such officer may assume infallibility all other like officers may do the same. and thus an end be put to civil government, one of whose cardinal principles is subjection to the laws.

Being a ministerial officer, the path of duty was plain before you. You strayed from it and became a volunteer in the effort to arrest the law, and it was successful. Had the property owners who were subjected to this additional tax considered the law unconstitutional, they could, in the proper courts, have tested the question; and it was their *undoubted* right so to do.

Your only duty was obedience. The collected will of the whole people was embodied in that law. A decent respect to them required that all their servants should obey it.

* * * * * * *

In coming to a conclusion in this case our attention has been arrested by a part of your answer to the third interrogatory of the attorney-general, wherein you say that by the action of the financial committee of the board of supervisors, about the 15th of October, 1867, in directing you not to extend the additional tax, and by the almost unanimous direction given by the board of supervisors, by resolution passed at the following December session, to the same effect and purpose, a public sentiment and feeling were created against its execution that continued after the issuing of the writ of mandamus, and was very embarrassing to you.

This leaves your conduct exposed to the inference that, as a public officer, charged with the performance of an important duty, involving in some degree the welfare of the State, you desired to interpose the advice and determination of other county officials who were under no responsibility whatever in the particular case, and that you would invoke an excited public opinion to justify a dereliction of duty. You certainly were not unaware that every man who obtains public office takes it with all its responsibilities, and voluntarily comes under a pledge to the constituents that they shall be fully met and promptly discharged. No public officer should shrink from the performance of a duty imposed by law because public sentiment may be opposed to the law. To sustain a plea that he was deterred from action by an excited public opinion would put an end to civil government. There can be no brighter exhibition of the moral sublime than a persistent performance of duty, unswayed by popular clamor and undismayed by threats of popular vengeance. However much an angry crowd of to-day may denounce the officer, the sober second thought of to-morrow will as loudly applaud.

I now present a late case, reported in 40 Nebraska, page 854, State *v.* Eugene Moore, auditor of public accounts, decided by a very able bench at the January term, 1894.

There, as here, an executive officer charged with the duty of examining and adjusting accounts, one who held, as you do, the public purse, honestly and conscientiously believed that an act appropriating money was unconstitutional. He refused to pay and the writ of mandamus issued to compel him.

The court held that his duty was purely a ministerial one, although under the constitution itself, creating his office, he was to examine and adjust all claims upon the treasury.

I read the syllabus and a part of the decision:

Constitutional law—Legislative appropriations for expenses of County—Mandamus to auditor. The legislature by an act duly passed and approved April 5, 1892, appropriated "the sum of $7,495.73 for the relief of Scotts Bluff County, and to reimburse said county for the expenses incurred in the trial of one George S. Arnold upon the charge of murder." In a mandamus proceeding in this court to compel the auditor to draw his warrant in favor of the treasurer of Scotts Bluff County for the amount appropriated, held (1) that the act was not in conflict with either the letter or spirit of the constitution; (2) that the appropriation of this money was in the nature of a donation, and that no inquiry or objection is admissible on the part of the auditor as to whether the appropriation was just, whether it was bestowed upon an undeserving recipient, or what motives influenced the legislature to make it; (3) that the only duty left for the auditor in the premises was a ministerial one, and that he had no authority to supervise the action of the legislature by an inquiry into the actual expenditures of the county in the prosecution of Arnold.

I now read from the answer of the respondent, who held the high office of State auditor of accounts, to show that his defense was that the law was unconstitutional and therefore no law. Like you, Mr. Comptroller, he was usurping the power lodged in the Supreme Court only.

And this respondent further says that under the provisions of the constitution and laws of the State of Nebraska the auditor of public accounts has authority to examine and adjust all claims against the State when presented to him, and to

refuse to pay the same when in his opinion the same are illegal or unjust. And this respondent alleges that he found said claim for said Scotts Bluff County unjust and illegal; that the act making the appropriation is contrary to the letter and spirit of the constitution of the State of Nebraska; that said county of Scotts Bluff was put to some expense by reason of said trial, but the amount thereof this respondent alleges, upon information and belief, was a much less sum than the sum alleged to have been appropriated by the legislature.

The court, after full presentation, gave its opinion. The part I now read gives the duty of the State auditor, as given in the constitution of Nebraska, to audit and adjust all accounts, and then points out the duty of the official to obey the law and not destroy it.

Section 9, article 9, of the constitution provides: "The legislature shall provide by law that all claims upon the treasury shall be examined and adjusted by the auditor and approved by the secretary of state before any warrant for the amount allowed shall be drawn: *Provided*, That a party aggrieved by the decision of the auditor and secretary of state may appeal to the district court." Now, what is meant in this constitutional provision by "claims upon the treasury" which the auditor must examine and adjust? We take it that it means claims which the State is or may be under legal obligation to pay, such as the salaries of its officers and employees, the costs of erecting buildings, the expense attendant upon the maintenance of its prisons, asylums, schools, and other institutions. We do not think the appropriation of the specific sum by the legislature to a particularly named person as a donation, gift, or a reward, and for which the State was under no legal obligation, comes within the claims which the auditor must examine and adjust. True, he is placed in his position as agent of the State to protect the treasury against demands not lawfully due and payable by the State; and when a claim is presented he must ascertain whether or not there is authority of law for its payment, and if he finds such authority that should satisfy him. If the legislature has, by express enactment, directed that a certain sum shall be paid to a person, and appropriated the money for such payment, the auditor's duty in the premises becomes then merely ministerial. The power conferred upon him is not to supervise the action of the State when, by its legislature, it has admitted and acknowledged the claim and ordered it to be paid. Where the claim is not admitted by the State, then he stands in behalf of the State, and as its agent it is his duty to determine whether or not it is admissible and justly and legally due; but when his principal, the State, whose officer he is, acknowledges the claim and directs it to be paid, then, inasmuch as the State's regulation for the payment of money requires him to draw warrants upon the treasury before such money can be paid, his duty is, without questioning, to conform to such direction. Finding the law for its payment to exist, he must regard that as plenary evidence that it is justly due. He can not properly question the authority of an act of legislation directing the payment of money by the State or disregard its authority, however fully he may be convinced that the money is bestowed upon an undeserving recipient.

The court makes it clear that the duty is to pay when the legislature has appropriated the money for the payment.

The court proceeds, speaking of the contention of the auditor that he can supervise the action of the legislature and annul its actions on the ground of unconstitutionality:

Such can not be the law. If it is, then instead of a government of three coordinate departments, the legislative is subordinate to the executive department. The auditor is an able and conscientious officer and deserving of the highest commendation for the jealous care with which he guards the public treasury, and he acts wisely in shielding himself from liability by the decisions of the courts in cases where he is in doubt, but in the case at bar he may not only legally draw the warrant demanded by the relator, but it is his duty to do so. He has no discretion in the premises. The demurrer to the return is sustained, and the writ will issue as prayed.

I might take up your time with numerous other modern authorities, but must leave most of them to my associates. I desire, however, to return again to the wisdom of the fathers to show how they understood the Constitution in the early days. James Madison, in a letter to General Armstrong dated October 8, 1813, sets forth clearly the

difference between Congress and the executive department; that the first is under no control save justice and policy, and that the latter is controlled by the law.

> It is a ground for proceeding in Congress, who are under no control but that of justice and policy, but must be otherwise regarded by the department [executive] which is controlled by the legal state of things.

Again, President Madison says in a letter to his Secretary of War, dated July 6, 1814, speaking of the matter of the countersignature of warrants by the accounting officer of the Treasury Department:

> Nothing is perceived in law or usage favoring the idea that the countersignature of the accountant is more than a form of verifying the authenticity of the warrants.

It is no more to-day under existing law than it was then.

"AN UNCONSTITUTIONAL LAW IS NO LAW."

The constant urging upon you by those who, for political or other purposes, seek to hold up the payment of this bounty is "if the law is unconstitutional then it is no law, and if, in your judgment, it is no law, being unconstitutional, it is not binding upon you, and in good conscience you can not obey it."

A specious but most dangerous suggestion, having no basis in sound reason or good judgment and subversive of the Government itself.

All laws of Congress are binding upon all citizens until declared unconstitutional by the highest judicial tribunal. The citizen disobeys them at his peril. A law declared to be unconstitutional by any judicial tribunal below the Supreme Court of the United States is still the law and is inoperative or held in abeyance only as to the parties in the suit pending. It is destroyed and becomes a nullity as to all citizens and particularly as to executive officials of all grades only when the Supreme Court of the United States has declared it to be in violation of the Constitution of the United States. That high court will so decide only when the question is fairly presented to it and is essential to the decision of the cause. It will not indulge itself in dictum and in the airing of its political views, as the inferior court of appeals for this district did in the Miles Case.

It may be your individual opinion that bounties are unconstitutional, either under the general-welfare clause or that permitting the regulation of commerce. You may stand alone in that view. Are you therefore to nullify the law? Great States have at times tried it without success. Are you greater than a sovereign State? If the position claimed for you is tenable, then the citizen filling your chair is greater than the Chief Executive, superior to the Supreme Court, and more powerful than a sovereign State.

Your proposed act is nullification with a vengeance.

South Carolina, acting as a sovereign State, tried on nullification of a law of Congress during Andrew Jackson's term, but "Old Hickory" put his foot down upon it. It declared that no protective duties could be laid under the Constitution and the impost duty laws, "being unconstitutional, were no laws." How like this incident was that, except that for South Carolina we are to insert the Comptroller of the Treasury, a Federal officer created by Congress and appointed by the President, the Senate concurring, to execute the law. Execution does not mean destruction. Enforcement does not mean nullification. The *doctrine* of nullification is one that no political party has ever dared *to set* up since Jackson gave it its quietus in 1833. Is it to be revived

in these democratic days? It is a monstrous doctrine, whether advanced by a State, a party, or an individual. When brought forth by an executive officer sworn to obey and enforce the laws, it is a monstrosity that should be strangled at birth.

In the days of the attempted nullification in South Carolina the President's proclamation warning all men to obey the law, notwithstanding they believed it unconstitutional, stands out like a beacon light. Let his words warn you from shipwreck on the rocks of nullification.

Let us look at this historical parallel.

Congress passed the tariff law of 1832, which South Carolina and several other States believed and declared was "unconstitutional." No court had so decided, but by virtue of the power which certain Southern States supposed they had because of the location of custom-houses in their borders and because of the supposed public sentiment there, it was proposed to presume the act of 1832 "unconstitutional." Although it was a law, yet it was assumed to be no law because "unconstitutional." They occupied the precise position that the Comptroller does. And what did President Jackson say or do? Did he support that theory? Did he assume to say to the nullifiers of South Carolina, "a law is no law because you believe it unconstitutional"? On the contrary, he proceeded to execute the law as he found it. It was a law, presumptively constitutional. It was for the courts to decide otherwise. He suggested the "Force bill," which was enacted to give him fuller power to execute the law as against nullifiers. That was sound democracy, sound policy, sound law, and the only action consistent with a republican form of government. The other theory means anarchy. In his message to Congress July 16, 1833, President Jackson said:

> Upon the power of Congress, the veto of the Executive and the authority of the judiciary, which is to extend to all cases in law and equity arising under the Constitution and laws of the United States made in pursuance thereof, are the obvious checks, and the sound action of public opinion, with the ultimate power of amendment, are the salutary and only limitations upon the powers of the whole.

And again:

> However it may be alleged that a violation of the compact, by the measures of the Government, can affect the obligations of the parties, it can not even be predicated of those measures until all the constitutional remedies shall have been fully tried. If the Federal Government exercise powers not warranted by the Constitution, and immediately affecting individuals, it will scarcely be denied that the proper remedy is a recourse to the judiciary. Such, undoubtedly, is the remedy for those who deem the acts of Congress laying duties and imposts unconstitutional.

And on the point of a State, the Government or a person being affected beyond the reach of judicial power, as is suggested here the Government now is, President Jackson said:

> The remedy in that case consists in appeals to the people, either to effect a change in the representation or to procure relief by an amendment to the Constitution. But the measures of the Government are to be recognized as valid and consequently supreme until these remedies shall have been effecually tried.

The nullification threatened here is on a smaller scale, but it is none the less dangerous, revolutionary, and pernicious. Surely the successor of Andrew Jackson will not give it his countenance, but will again drive nullification under cover.

It is lamentable that hundreds should be driven into financial ruin, that the future of great States should be put in jeopardy, and that a valuable industry worth hundreds of millions to the Republic should

be destroyed; but all that is nothing to the dangerous precedent of nullification of a law of Congress here attempted.

The power does not exist in the Executive either to nullify or suspend a law. In the convention that framed the Constitution there was much debate over the proposition of an absolute negative by the President. It was beaten by a vote of ten of the States. Mr. Butler then moved:

Resolved, That the National Executive have the power to suspend any legislative act for the term of ———

Dr. Franklin in speech supported it.

Mr. Gerry thought it mischievous as an absolute veto.

All of the thirteen States voted against it.

And yet we are met with the proposition that an executive officer, sworn to faithfully execute and enforce the laws, proposes not only to suspend but to annul.

A few more extracts from Andrew Jackson's trenchant pen and I leave this branch of the subject. I quote from his proclamation of December 10, 1832, calling upon his fellow-citizens to obey the law, even if unconstitutional in their individual or official opinion:

It is no answer to repeat that an unconstitutional law is no law, so long as the question of its legality is to be decided by the State itself; for every law operating injuriously upon any local interest will be perhaps thought and certainly represented as unconstitutional, and, as has been shown, there is no appeal.

If this doctrine had been established at an earlier day the Union would have been destroyed in its infancy.

He further says that the power to annul a law is—

incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the object for which it was formed.

Again he says:

There are two appeals from an unconstitutional act by Congress—one to the judiciary, the other to the people and the States.

He winds up this great proclamation by this stirring appeal:

Fellow-citizens, the momentous case is before you. On your undivided support of your Government depends the decision of the great question it involves, whether your sacred Union will be preserved and the blessings it secures to us as one people shall be perpetuated.

I hope, Mr. Comptroller, you will go to these fountain heads for guidance, for they will lead you to know that prompt obedience to the law is the highest duty of an executive officer.

I now give you late executive and departmental authority, coming from such sources as to compel respect. Great lawyers only should be and are usually called to the head of the Department of the Interior. No better lawyer lives than Secretary (now Senator) Henry M. Teller; Secretary Lamar closed his eventful life, so full of honors, on the Supreme Bench, and Secretary Hoke Smith still is at the head of the Interior Department. Hear what they say:

Secretary Teller, April 21, 1876, 1st Decisions Department of the Interior Relating to Public Lands, Volume I, page 335:

It is no part of my duty to here discuss the constitutionality of the act of 1876, nor the questions which may arise as to conflict of title by reason of its having a place on the statute books. Those are questions for the court. My plain duty is to execute the laws under which I am called upon to act in accordance with their letter and spirit, as I find them.

Secretary Lamar, August 20, 1886, volume 5, page 91:

What the statute confers, the statute means to be enjoyed. What the statute directs, it means to have done. Not to do it, or even to delay unnecessarily in doing it, is to violate the statutes and involves a grave dereliction of duty.

Secretary Smith, June 22, 1893, volume 16, page 553:

The duty of this Department is to administer the laws as they are found in the statute books, and not to determine whether they are in violation of the Constitution or of treaties with foreign nations.

Are you to override such opinion as these expressed by such men? You will certainly hesitate before doing so, and I firmly believe will decline being led into such new and dangerous paths.

In the great press of matters that has been lately upon me I was pleased to receive yesterday a brief prepared by Mr. Ham, formerly my secretary when I was in the Senate. I read a brief extract from it, expressing my sense of obligation to him for his aid and assistance:

A proper construction of the Constitution is that if the executive branch desires to raise the issue of constitutionality of a bill with the legislative branch, the Constitution provides a way, to wit, by veto. The legislative branch may then recede, or it may join issue and test the question by an effort to secure a two-thirds vote in either branch. But if the Executive sign the bill it becomes a law, the constitutionality of which neither branch may raise against the other. It has become the act of the lawmaking power, legislative and executive. Citizens may raise the question, but for the executive branch to do so after it has exhausted its power, as against the legislative branch, would be ridiculous. The Executive was a partner in enacting the law. It could not become a law without positive Executive sanction or neglect to sign, both methods being allowed the Executive to express approval. When the Executive has acted by signing or by allowing it to take effect without the Executive signature, it is a law until set aside by a court, and the judiciary then is the only agency which can be employed to test the issue of its constitutionality. This must be so, otherwise we would have the spectacle presented of every inferior officer under the Government seeking to overrule the Congress, and the Executive as well. Claimants here stand in the shoes of Congress and the executive head of the nation. Both have pronounced the statute under which the claims are made a law. It is suggested that it is not the province of an executive officer to overrule that action.

I submit that these propositions are fairly put and carry conviction.

THE BOUNTY CLAIMS AN EQUITABLE COMPROMISE.

These are not ordinary claims. Congress in the exercise of its equity powers, for that it has equitable powers is fully recognized by every authority, has passed on the fundamental question. Now, what was the fundamental question? What lay at the bottom of this last legislation? Recognizing this contract right in the sugar producers, abrogated by Congress, under what I think was a violent and unjust assumption of power, it said, "We will compromise with these people and give them that to which they are fairly entitled, viz, the entire bounty earned before the repeal of the act, or from the 1st of July to the 28th day of August, 1894, and eight-tenths of a cent for the crop of 1894, because in that year they were proceeding under the sanction and by the authority of the Government of the United States by virtue of a license issued out of the Treasury Department on the 1st day of July of that year, and running for the fiscal year." It has passed, then, upon the fundamental question, decreed the constitutionality of bounties, and has ordered and directed the officers of the Treasury to ignore all questions except as to the amount of sugar produced, whether produced in compliance with the law and regulations, and the saccharine strength of the sugar.

The law of March 2, 1895, provides:

That there shall be paid by the Secretary of the Treasury to those producers and manufacturers of sugar in the United from maple sap, beets, sorghum, or sugar cane grown or produced within the United States, who complied with the provisions of the bounty law as contained in Schedule E of the tariff act of October first, eighteen hundred and ninety, a bounty of two cents a pound on all sugars testing not less than ninety degrees by the polariscope, and one and three-fourths cents a pound on all sugars testing less than ninety and not less than eighty degrees by the polariscope, manufactured and produced by them previous to the twenty-eighth day of August, eighteen hundred and ninety-four, and upon which no bounty has previously been paid; and for this purpose the sum of two hundred and thirty-eight thousand two hundred and eighty-nine dollars and eight cents is hereby appropriated, or so much thereof as may be necessary.

That there shall be paid to those producers who complied with the provisions of the bounty law as contained in Schedule E of the tariff act of October first, eighteen hundred and ninety, by filing the notice, application for license, and bond therein required prior to July first, eighteen hundred and ninety-four, and who would have been entitled to receive a license as provided for in said act, a bounty of eight-tenths of a cent per pound on the sugars actually manufactured and produced in the United States testing not less than eighty degrees by the polariscope, from beets, sorghum, or sugar cane grown or produced within the United States during that part of the fiscal year ending June thirtieth, eighteen hundred and ninety-five, comprised in the period commencing August twenty-eighth, eighteen hundred and ninety-four, and ending June thirtieth, eighteen hundred and ninety-five, both days inclusive; and for this purpose the sum of five million dollars, or so much thereof as may be necessary, is hereby appropriated: *Provided*, That no bounty shall be paid to any person engaged in refining sugars which have been imported into the United States, or produced in the United States, upon which the bounty herein provided has already been paid or applied for.

The bounty herein authorized to be paid shall be paid upon the presentation of such proof of manufacture and production as shall be required in each case by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and under such rules and regulations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

And for the payment of such bounty the Secretary of the Treasury is authorized to draw warrants on the Treasurer of the United States for sums as shall be necessary, which sums shall be certified to him by the Commissioner of Internal Revenue, by whom the bounty shall be disbursed, and no bounty shall be allowed or paid to any person as aforesaid upon any quantity of sugar less than 500 pounds.

For the examination of claims and returning the amounts due the Commissioner of Internal Revenue is authorized to employ two internal-revenue agents. Any person guilty of a fraud is to be fined and imprisoned.

This is the law under which we should be acting, but apparently are not.

Now, your honor, the law will, I hope, be very fully commented upon by some of my associates, because I feel I am taking more time than I should. We present it to you, dated as it is after the Dockery Act, passing as it did on the 2d day of March, 1895, as a later law than that defining your duties, as a specific law providing in this compromise of the contract the method by which the bounty shall be ascertained, the authority which shall pass upon the steps that shall lead up to the warrant, and the party by whom the money shall be disbursed from the Treasury of the United States. I simply read it. I do not propose to take the time to comment upon it, but I think it will be evident to you, upon hearing the full argument on the question, that, as I have said, this is no ordinary claim, but it is one where Congress in the exercise of its equitable power and its constitutional power has said that the books are closed except as to the examination of this detail, and has pointed out the officials upon whom the responsibility rests to investigate and to pay. I submit to you that under this law you have no power or authority. Did Congress have power to pass such a measure?

Mr. CAFFERY. Will you allow me to ask a question right here? I wish to know, as a mere matter of political inquiry, whether or not your associates and colleagues on your side of the Chamber, belonging to your political faith——

Mr. MANDERSON. You are entering on very dangerous ground.

Mr. CAFFERY. Exactly. I wish to know whether you and your associates did not vote for this modicum of bounty as contained in the act of March 2, 1895, as a measure of relief and as an equitable compensation to the planters instead of establishing any bounty principle?

Mr. MANDERSON. Beyond any question their effort was to get all they could. They got as much as they could in the compromise. They should have had very much more. The eight-tenths of a cent bounty, which is the compromise for the sugar produced in 1894, was all that could be obtained because of disturbance and conflicts, to which I need not refer, for I would not unfold the secrets of the dread charnal house. It was the best we could get. But of course it was an equitable or an attempt at an equitable adjustment of this matter—falling far short of equity—to save those people from destruction and disaster most dire. The principle of giving bounty had been long established and acquiesced in.

Now, did Congress have the power? There is a celebrated old case known as the Carmick-Ramsey Case, with which many have familiarity, and I shall not do more than read one or two extracts from the report of the select committee. It is found in Rep. Com. No. 270, Thirty-sixth Congress, first session. It was claimed in the act of Congress that Carmick and Ramsey had a contract for the carriage of the mails which was abrogated by the Postmaster-General, and the First Comptroller of the Treasury was required to adjust the damages due to them in law, equity, and justice. There was a good deal of trouble over the matter. I hold here the report made by Senator Green. He says the law—

> Was mandatory and explicit. The only previous constructive question connected with the subject, namely, as to whether there was a contract and whether that contract had been abrogated, Congress determined and decided for itself in the act aforesaid. Congress decided that there was a contract and that it had been abrogated by the Postmaster-General, and that the injured parties were entitled to damages, and Congress appointed the First Comptroller alone for the specific purpose to ascertain the damages and to render his award, that the amount might be paid.

Now, the question in dispute was whether the First Comptroller in the exercise of his power could not only pass upon the amount involved but could go back and investigate the question whether the contract had been abrogated. That was the contention, and it ran through many a year and assumed many phases. I turn, however, to the report to read an extract from a letter from a man known to fame, by the name of Reverdy Johnson, commencing on page 5 of this report. He says:

> Suppose, then, you should decide that there were no damages because the contract was not abrogated; is the act of Congress obeyed? Of course not, and that for the plain reason that Congress, in the act, have declared that it was abrogated, that there are damages to be assessed, and have merely confided the administrative duty of assessing them to you.

Then he quotes from Attorney-General Black as to whether the contract with them was valid and binding. It certainly was, and Mr. Attorney-General Black had so decided. It was so because it was made under sanction of an act of Congress, and therefore, as

Judge Black says, was binding in all its parts, and Congress, when the facts were all before it, decided that by all the circumstances the contract was abrogated.

Now I turn to another report for the purpose of ascertaining just what that noted man Jeremiah Black said, and I refer to it because in this letter that eminent man and great lawyer has announced a proposition which, while beyond question is strict law, is given to such extreme that at first it is shocking to one's sense of the power of Congress.

Undoubtedly Congress may order the money of the Treasury to be paid to a person who has no claim upon the Government as well as to a just creditor.

He is right. That is a thing of everyday occurrence in Congress. As I have looked about me sometimes and have seen those who were the recipients of money from the Treasury, I have thought that the number of those who, having no just claims, got money from the Government exceeded the number of those having righteous claims against the Government who were paid.

The Attorney-General continues:

If Congress had chosen to say that Carmick and Ramsey should have half a million of dollars as a gracious gift, the Executive could not refuse to pay it, no matter how clear the proof might be that the law was unadvised and wrong.

That is rather an extreme statement, and yet I defy any lawyer to deny its truth. It is within the power of Congress so to exact, exemplified and acted upon almost every day in Congressional experience.

Mr Black goes on:

A recital in such a law that the sum to be paid was intended as compensation for damages which never occurred would not take away the right of the party to receive what was given. The legislative will, expressed in the constitutional form, is enough, without more, to avouch a legislative act. But here is a law which does not give to the claimants any specified sum of money. The amount which they may lawfully demand is to be ascertained by the Comptroller. To enable him to do this a standard or rule is furnished to him, and upon that he must base his calculation. He shall allow them the damages due to them on account of the abrogation of their contract.

Mr. J. E. DODGE. Where is that letter? It is not in Report No. 270.

Mr. MANDERSON. No; you will find it in House Executive Document No. 30.

Mr. DODGE. Accompanying the same measure?

Mr. MANDERSON. In another document on the same subject.

Mr. DODGE. Thirty-sixth Congress?

Mr. MANDERSON. Thirty-fifth Congress, second session, House Executive Document No. 30.

The COMPTROLLER. Do you agree with the view to the full extent expressed there?

Mr. MANDERSON. I do. I have seen it in operation during my twelve years of Congressional life. I believe the Congress of the United States, under the powers conferred upon it by the Constitution, has the right, as Attorney-General Black says, to make a donation or a gift to anybody without consideration, if it sees fit to do so.

That is not this case, however. Here is no gratuity, but a compromise of a just claim resting on legislative contract.

The COMPTROLLER. I understand.

Mr. MANDERSON. The Carmick-Ramsey Case is not this case, and I present that extreme view of Black as showing upon the question of *constitutionality* or the consideration of the question of constitution*ality to* what extent law officers and the courts have gone in regard

to the powers of Congress. In the same document I find I have a reference to some statement made by Comptroller William Medill, in the same line. William Medill, the Comptroller, was a man of no mean repute, and he says as to the Carmick and Ramsey Case:

It is not denied that Congress has full constitutional power to order the public money to be either paid away or given away at its pleasure; but its will so to do must be expressed in proper form—

Of course "proper form" must be an enactment in proper form—

nor will a bad reason or false object invalidate the gift any further than the rule holds good that where the reason of the law ceases the law itself ceases:

Thus, Congress might enact a law reciting that, whereas I had a contract with the Government which had been violated, I should be considered as injured to that amount, and paid the sum of $10,000, the fact being that I never had had such a contract at all. Yet it was the will of Congress that I should have the $10,000, if so ordered, and the law gave the officers authority to pay me the money, notwithstanding the law gave a reason which did not exist for paying the same.

That is going to a very great extent, because there would be, perhaps, the evidences or positive proof that Congress had been imposed upon or mistaken. If it had allowed the $10,000 under a mistake of facts, or under a fraud perpetrated by the claimant, it might become the duty of some citizen to invoke the courts to prevent its payment.

The COMPTROLLER. Can a citizen do that?

Mr. MANDERSON. If the citizen has any interest in the matter he can.

The COMPTROLLER. How does he get an interest?

Mr. MANDERSON. He may get an interest as a taxpayer.

The COMPTROLLER. Can a taxpayer go into the Federal courts and attack an appropriation?

Mr. MANDERSON. He can if he is directly interested in it.

The COMPTROLLER. How is he directly interested except as a taxpayer?

Mr. MANDERSON. We will try to defeat him if he should make an effort in this particular case.

The COMPTROLLER. I guess you will defeat him.

Mr. MANDERSON. I think we will.

The COMPTROLLER. I think so, too. You do not think he can go into court. You do not contend that a simple taxpayer can go into court and attack an appropriation?

Mr. MANDERSON. No, I do not think he can, unless he has a direct interest in the matter; but in the particular case supposed I think I could devise a plan by which the law could be defeated if it were based upon fraud. But I bring this case forward to show to you the extent to which one of your predecessors has gone. He says the $10,000 would have to be paid although Congress was mistaken and there never had been a contract and it was the merest donation.

But I must hasten. I have devoted more time to the consideration of this question than I thought I should. I simply desire that you shall try the question as to the advisability, to draw it mildly, of your passing upon the validity of statutes and their constitutionality, by some cases that may very readily be cited. Many other apt instances will naturally present themselves.

Years ago the Government of the United States embarked in the Louisiana purchase, and agreed to pay $15,000,000 for the Louisiana territory. The Federalists of that day, you will remember, declared that that was unconstitutional. The air was full of the proposition that there was no right in the Government of the United States to

acquire territory either through treaty or through law, by purchase and taking the money of the people for that purpose. That was the Federalist idea. Suppose we had had some Treasury official with that limited idea of the powers of this great Government at that time; what a spectacle for gods and men he would have presented, and what a hissing and scorning through all time he would have received, had he placed barriers of obstruction in the road and had he been able to defeat the magnificent purchase of that vast empire which has made this country great and strong! And yet never was a question presented in the whole history of the Republic that so bristles with argument as the question of the constitutionality of the use of the public money for the purpose of buying territory. Thank God, it was not decided in that way, and I hope we will go on conquering and to conquer, purchasing and to purchase, until we get Hawaii and Cuba and other possessions to which some of us look with longing eyes.

In 1861 a difficulty arose. Certain States attempted to secede from the Union. There were those, and they were by no means few, who said, "You can not coerce a sovereign State. It is unconstitutional to attempt to preserve the Union and keep those States within the bounds ot this mere union of States, not a nation." There are not any of us who lived in that day whose brains were not puzzled over the question. I, a young fellow at the time, came here to see Lincoln's first inauguration. I stopped at what was then Brown's Hotel, now the Metropolitan, and I stood around, boy as I was, listening to the conversation of excited men. It was the all-absorbing question. The constitutionality of the effort on the part of the Government of the United States to bring back the seceding States was debated in every barroom. It was the accompaniment of every drink and the subject of talk on every street corner.

I remember going from here over to Philadelphia, and I met there a colored man, black as the ace of spades, a glib talker and a very bright fellow. I shall never forget the way he put it. He said to me, "You, sir, have been over to Washington. Did you hear anything about whether we can prevent those States from seceding?" "Oh," I said, "I have heard a great deal both ways, and I do not know anything about it. Upon the constitutional question I am uninformed." I said: "How does it strike you?" "Now, sir," he said, "it seems to me about like this: Suppose you and I were out here in the Delaware River, in a boat so constructed that if one of us should get out of the boat the other would drown. You would have the undoubted right to jump out of the boat, but can there be any question of my right to hold you there and save my life?" [Laughter.] I never heard the question better put than it was put by that darky. But the constitutionality of the act was denied. It was said that it was unconstitutional to raise and pay armies, to construct a navy in order to maintain the flag and save the nation. What a piteous spectacle in history would be given by any Comptroller of the Treasury who should have said when the appropriation acts came in to maintain the war, to pay and equip those immense armies, running into an expenditure of millions daily, "Oh, well; this is all very well; the result is desirable; it might be well to save this nation, but, then, we can not constitutionally, and I really must refuse to countersign these warrants." I think there would have been a rape of the Treasury and a murder of the Comptroller before he got very far along with his constitutional doubts and hesitations.

The COMPTROLLER. There would probably have been an official execution. [Laughter.]

Mr. MANDERSON. Probably, and deservedly. So I might run on and show the numerous fiascoes, the dreadful disasters which might come from the enforcement of the doctrine that an executive official, in the performance of duties quasi judicial and ministerial, such as appertain to you in the passing of claims upon the Treasury, shall so extend his quasi-judicial power or right as to permit him to nullify, to destroy, to kill so sacred a thing as a law passed by the Congress of the United States and approved by the Chief Executive.

The case of Kendall *v.* United States, reported in 12 Peters, was almost the counterpart of that of the Carmick-Ramsey Case. Claimants had a contract to carry the mails, and certain allowances of credits made thereon by one Postmaster-General were stricken out by his successor, and the sums withheld. Plaintiffs appealed to Congress, which passed the act of July 2, 1836, "authorizing and directing the Solicitor of the Treasury to settle and adjust the claims, to inquire into and determine their equity, and make such allowance as may seem right," with directory provisions to the Solicitor in certain respects not material here. The act then proceeded, as follows:

"And the Postmaster-General be, and he is hereby, directed to credit the claimants with the sums found due," which the Postmaster-General refused to do, giving as a reason that the Solicitor of the Treasury in his award had exceeded the power given him by the act of Congress. In other words, he interpreted the act of Congress devolving the power on the Solicitor, and because he differed with the Solicitor he refused to "credit" for payment as the act of Congress directed. Thereupon the claimants went to Congress, and the Senate Judiciary Committee made a report. (No. 88, Twenty-fourth Congress, second session.) The committee held that if Congress had intended to revise the decision of the Solicitor the Postmaster-General would not have been directed "to credit" without the intervention of the further action of Congress, and the committee recommended the adoption of this resolution:

> That the Postmaster-General is fully warranted in paying and ought to pay the full amount of the award.

The Postmaster-General still refused to "credit" under the award or decision, and Congress (p. 533, 12 Peters), believing that it had passed sufficient legislation to meet the case, refused to enact further, whereupon the plaintiffs asked that mandamus issue on behalf of the United States against the Postmaster-General. Held, that mandamus would lie. The court (p. 610) said:

> The mandamus does not seek to direct or control the Postmaster-General in the discharge of any official duty, but to enforce the performance of a mere ministerial act, which neither he nor the President had any authority to deny or control. It would be an alarming doctrine that Congress can not impose upon any executive officer any duty it may think proper.

It goes without saying that the duty required to be performed must not violate the Constitution, but whoever heard that it was the province of the ordinary accounting officers of the Government to assume that a law is unconstitutional in order to escape performance? No question of that sort was involved in 12 Peters, and so the Postmaster-General sought to shield himself behind the power of the Executive. But the court said that was a doctrine that could not "receive the sanction of the court." It would be clothing the President with a power to entirely control the legislation of Congress and paralyze the

administration of justice. To contend that the obligation imposed on the President "to see the laws faithfully executed implies a power to forbid their execution is a novel construction of the Constitution, and entirely inadmissible." And again: "The Postmaster-General was simply required to give the 'credit.'" There was no room for the exercise of any discretion, official or otherwise. "All that was shut out by the positive and direct command of the law." (12 Peters, pp. 614-626.)

It was the direction to "credit" after the finding that made the duty purely ministerial; which absolved the Postmaster-General of all discretion. So here, practically. The finding of fact has been made and we have reached the stage of payment. That Congress undertook to control by making the act mandatory. The amount, of course, was necessarily left in abeyance.

I am fully prepared to argue to you as a fellow-citizen and as a brother lawyer the question of the constitutionality of the bounty act. I heard it suggested, perhaps by my associates, that you desired some argument upon the question.

The COMPTROLLER. In view of the decision in the Miles Case.

Mr. MANDERSON. You desire an argument based upon that case?

The COMPTROLLER. Yes, sir.

Mr. MANDERSON. I have already addressed myself to that question at considerable length in the Senate of the United States, and would be pleased to submit to your consideration that speech, of which I have some copies. I am ready to argue the question of the constitutionality of bounties, addressing myself to you as a fellow-citizen.

The COMPTROLLER. Pardon me, Senator, but would you like for us to take a recess now?

Mr. MANDERSON. I should greatly prefer to do so, as I have found it exceedingly warm.

The COMPTROLLER. There are one or two questions I desire to ask you, but I will do so hereafter.

At 1 o'clock a recess was taken until 2 o'clock.

At the expiration of the recess Mr. Manderson resumed his argument.

THE CONSTITUTIONALITY OF BOUNTIES GIVEN FOR PUBLIC PURPOSES, SHOWN BY INTERPRETATIONS OF THE CONSTITUTION, BY USAGE AND BY LAW.

Mr. MANDERSON. If your honor please, I suggested before the recess the reasons for my firm conviction that the question of the constitutionality of law is not one for the consideration of an executive officer, and now in such mild manner and quiet way as I may in this intense heat I shall try to present the reasons convincing me, and that have heretofore found expressoin by my vote and voice, why this bounty law and any law granting a bounty, which means an apportionment of some part of the public funds to a private individual, is entirely constitutional where it is for a public purpose. And the only judge of what is a public purpose, certainly the only judge as between the legislative and the executive branches of the Government, is the Congress of the United States and, in States, the legislatures of States.

Now, fully honoring and inclined not only to honor but to exalt the eminent position that you fill with such ability and grace, I can not *refrain from* the suggestion that what I may say to you upon this sub-

ject is addressed to you rather in your capacity as a citizen and as a brother lawyer than in your capacity as Comptroller, for with this question you have officially nothing to do.

I would reason with you by the way. If there is in your mind that disturbance which prompts you as an individual rather than an official not to believe in the principle of protection, I would present the arguments that lie at the base of that American system of which you and I have heard much from stump speakers and in comments upon which we have in public places ourselves occasionally indulged. If the principle of protection is right, if it is one that can be found under the powers granted to Congress either to regulate commerce or because of the general-welfare clause of the Constitution, then I suggest to you that there is no argument which advances itself to the consideration of that question and leads to the conclusion that protection by impost duty is right which does not just as logically, just as irresistibly, and with just as much persuasive and compelling force lead to the proposition that bounties can be paid for encouragement of American industries. It goes without saying that they should be for a public purpose. It is a matter of comparatively late date that the doctrine of protection has been thus attacked. Those who framed the sacred instrument that lies at the foundation of our institutions had no questionings in their minds as to the right of protection to home industries; their inauguration by a system of protection, their cultivation and growth by a system of protection, and their maintenance by a system of protection, whether that protection came from impost duty or by bounty. The fine-drawn distinction of the later day, which advocated protection that was incidental and not purposely placed as distinct from protection for protection's sake, did not obtain in the early history of the Republic. By quotations ample, liberal, from the great minds of the early day, whether they were representing the views of Jefferson on the one side, or of Hamilton on the other, I think I can fully establish the fact that, in the minds of many, bounties were considered preferable to that more indirect protection that came by impost duty. I may be pardoned if I refer for these quotations to that which ought to impart absolute verity, because it was a speech that I made a year ago in the Senate. I there, on the 1st day of June, 1894, in consideration of the questions that arose during the pendency of the Wilson bill, made certain remarks that I have before me. I have no idea your honor has ever given me the benefit of having read this too lengthy speech. I propose to leave it with you for your prayerful consideration, in the hopes that its cogent reasoning and amplitude of truth will lead you to the proper political faith and that you will be found upon this great question, as you are on many other great questions, entirely right before you get through with its reading. [Laughter.]

Let us look first at the legislation proposed in the early Congresses. I need not refer you to that first act after the adoption of the Constitution which was for the protection and encouragement of American manufactures. Never in those early Congresses was the proposition of protection and encouragement by either impost duty or bounty submitted that it did not find advocates of all political complexions, and whenever the matter came to vote, the principle received majorities that fully vindicated the opinion of those who helped frame the instrument and were living when it became the foundation stone of this Republic. The instances are numerous and I will give a few.

In April, 1879, a bill was before Congress for consideration, in which there was a proposition to put a duty on all unwrought steel that should be imported. Now I quote from the record:

Mr. Lee moved to strike out this last article, observing that the consumption of steel was very great, and essentially necessary to agricultural improvements. He did not believe any gentleman would contend that enough of this article to answer consumption could be fabricated in any part of the Union; hence it would operate as an oppressive though indirect tax upon agriculture, and any tax, whether direct or indirect, upon this interest, at this juncture, would be unwise and impolitic.

No question there of right, but a question of policy; and history repeats itself. In this day, with our enormous production of iron and steel, with a production so great as to largely supply all the demands of this country and permit exportation as well, it sounds very strange to read the proposition advanced by Mr Lee that it would be impossible for this country to answer by production the demand for consumption; just as we have those to-day, unfamiliar with the subject of sugar, who have grave doubts as to the ability of this country to produce all the sugar that it needs. The saccharine principle pervades all nature. Sugar can be extracted from almost everything. I remember that my old professor of chemistry at school used to say to us that it was so generally prevalent that he could take the shirts off the backs of the young men who composed his class and extract sugar from them; and the dirtier they were probably the more sugar. [Laughter.] And so it is. There is no principle of nature that is so all-extensive as the saccharine principle, and those of us who have explored the matter know to-day that under proper safeguards and fair protection it is entirely possible for this country to save itself the many, many millions which it expends for foreign sugar by producing it at home. But let us see what was said in the First Congress about iron and steel.

Mr. Tucker entered the debate and—

Joined the gentleman in his opinion, observing that it was impossible for some States to get it but by importation from foreign countries. He conceived it more deserving a bounty to increase the quantity than an impost which would lessen the consumption and make it dearer also.

Mr. Clymer, of Pennsylvania, came into the debate and said—

That the manufacture of steel in America was rather in its infancy; but as all the materials necessary to make it were the product of almost every State in the Union, and as the manufacture was already established and attended with considerable success, he deemed it prudent to emancipate our country from the manacles in which she was held by foreign manufactures.

Can anything more admirably apply to the present condition of sugar than that statement? Here is a product which now, like iron and steel was then, is in its infancy, and we can strike from our hands the "manacles of foreign manufactures" by fair encouragement. Mr. Madison then came into the debate, and—

Thought the object of selecting this article to be solely the encouragement of the manufacture and not revenue, for on any other consideration it would be more proper, as observed by the gentleman from Carolina [Mr. Tucker] to give a bounty on the importation.

From these gentlemen, representing different portions of the country, there is, then, as early as 1789, in the debates of Congress, this recognition of the power of the Congress to give a bounty, a payment *from the* Treasury of the United States to those who are ready to *embark in* the industry that would be for the public good.

At the same Congress there came a question with respect to hemp as to whether it should be cultivated and protected in this way, and in the Annals of Congress you will find that Mr. Partridge—I think he was from Massachusetts—

Informed the committee that the State of Massachusetts imposed only a duty of 1 per cent on the importation of hemp, which was applied to form a bounty of a dollar per hundredweight on that raised within the State.

Mr. Hartley preferred giving a bounty on hemp of American growth to taxing the foreign, because the existence of the manufacture and of shipbuilding also was involved in the price of the raw material.

No man to gainsay these different suggestions of bounty upon hemp and steel.

The COMPTROLLER. Have vou investigated the question that there was nobody to gainsay it?

Mr. MANDERSON. Yes, sir; I have investigated it, and in the Annals of Congress you will find that there was no one to attack the bounty principle except as I shall call your attention to it, that here and there some man expressed a doubt as to whether it was the best way to reach the result. But as to the question of the constitutionality of giving the bounty, there is scarcely a whisper.

No mean man entered the discussion, no small lawyer was heard when Daniel Webster rose to speak. If there was constitutional objection to the payment of bounties, is it not to be presumed that that great constitutional lawyer would raise the objection? Is it not to be presumed that he would say to his colleagues in the Congress of the United States, "Beware; you are encroaching too far upon this fundamental instrument; you are attempting that which is forbidden. Pass not this proposed law. Let us not give bounties, because neither under the power to regulate commerce nor under the power to provide for the general welfare can you do this thing"? No suggestion of that kind ever came from Webster, the great expounder of the Constitution. On the contrary, he is reported in the Annals as saying:

If it be thought useful and necessary, from political considerations, to encourage the growth and manufacture of hemp, Government has abundant means of doing it. It might give a direct bounty, and such a measure would at least distribute the burden equally.

It does seem to me that when as citizens we come to the consideration of this question the words of that eminent lawyer should carry great weight even to the mind of the modern tariff reformer. Mr. King, a Democrat of New York, on the question to strike out of the bill the 2 per cent per pound on hemp, said:

If gentlemen wish to encourage the production of hemp and iron, they ought to bring in a bill to give bounties on these articles. The burden would then fall equally on the community.

There is this to say in regard to a bounty as a preferable method of encouraging, that it does frequently make a more equal distribution for a public purpose and for the general welfare than do impost duties.

Now, let us see what some of the early laws were. When the item of sugar in the tariff act of 1794 was under consideration Mr. McDowell, of North Carolina, considered it "highly impolitic to tax the infant manufactures of America. He would rather, if the public Treasury could afford it, give a premium (or bounty) for the encouragement of our manufacturers." In the first tariff act (Vol. I, Stat. L., p. 24)

there was a bounty on fish. By section 4 of that act a bounty or allowance was made as follows:

On every quintal of dried fish and on every barrel of pickled fish of the fisheries of the United States exported, and on every barrel of salted provisions of the United States exported, 5 cents per barrel, in lieu of the drawback on imported salt used.

Let me turn for a moment, for there has been suggestion that this was not a bounty, but a drawback——

The COMPTROLLER. You have seen Mr. Whitney's brief?

Mr. MANDERSON. I read his brief in the case in the court of appeals.

The COMPTROLLER. That is the one I mean.

Mr. MANDERSON. Yes; I have read it, and I read the brief of the other side as well; and let me say as to that case what I may say later on in more amplified form, that in the brief of the attorneys who represented Miles there is nothing suggested with reference to the constitutionality of the bounty, and it is evident they never supposed the point would be raised. The court of appeals seemed to rush in where it is said angels fear to tread. It took up a question not presented to it by the two sides of the controversy. Departing from the rules laid down by the courts, it saw fit as mere dictum, in a case where the question was not involved, to declare that bounties were unconstitutional. I read the brief of Mr. Whitney, and I also read the brief of the other side, and I saw there was a one-sided presentation of the proposition of unconstitutionality. I have no question that the attorneys of Miles never for a moment considered that the court would forget the rule of all courts of high authority, which says that a court will not pass upon a constitutional question when a case can be decided on any other, and as mere dictum it would announce that bounty laws were unconstitutional. In the bowels of a judicial opinion two of the judges have interjected a political speech.

Let us see whether this was a drawback or a bounty. The first bounty encouragement for fisheries was enacted for two purposes: First, to give the fishermen a drawback equal to the duty on foreign salt used, and to train men for sea service and so furnish us with sailors in time of war. There was a drawback on foreign salt used, allowed our codfisherman in the first tariff act. That can be found in the first volume of the Statutes at Large, page 24. But this drawback, passed in 1789, was abolished by an act of February 18, 1792, and a direct bounty, not a drawback, was given to vessel owners engaged in codfishing, three-eighths of it going to the fishermen—an encouragement of the industry by direct bounty, and, as an encouragement to men who would be fitted to man our Navy, it provided that three-eighths of the bounty should go to the fishermen themselves. (Stat. L., Vol. I, p. 229.)

That bill was discussed very fully on the point involving the power to grant bounties; and, to test the sense of the House, Mr. Giles, of Virginia, moved to strike out the first section of the bill. Now, here is one of the whispers concerning unconstitutionality. He observed that the constitutionality of the proposition struck him in doubtful point of view, and it being the first attempt made to exercise such power (in which he was mistaken) he felt justified in making his motion. A motion to strike out the words "bounty now allowed" and insert "allowance now made" was defeated. So the Congress at that early day was not frightened by the use of the word "bounty." They did not see fit even to substitute the milder term "allowance" for "bounty." They met the issue as it was presented, and by a

large vote they said, "No; we do not mean 'allowance'; we mean 'bounty,' and we say so." This bounty to vessel owners was increased in 1813 and again increased by the act of March 3, 1819. (See 3 Stat. L., p. 51.)

If this allowance to cod fishermen was merely a drawback, why was the drawback on foreign salt repealed and a fixed allowance given the vessel owners, depending on the size of the vessel, and why were the fishermen given three-eighths of the allowance? And why was there a provision in the law (sec. 3) making skippers who signed the shipping agreement "liable to the same penalties as deserting seamen or mariners?" And why did section 7 of the act provide that any deficiency which should exist to pay the bounties to vessel owners should be paid out of any moneys which from time to time should be in the Treasury not otherwise appropriated? And why require the vessels to be at sea four months? And why pay the bounty whether the fish were exported or not? The drawback went only to exportation, but the bounty provided by the act of 1792 had nothing to do with exportation. If the vessel was at sea four months and was of the proper burden, she received the bounty, five-eighths of it going to the owner of the vessel and three-eighths of it among the seamen.

It certainly seems to me that Mr. Whitney could not have fully investigated the subject or he would not have taken the position that I remember he advanced in his brief, that this was not a bounty, but a simple drawback, and was not in the nature, as I remember his expression, of a bounty to shipowners.

In the case of the schooner *Harriet* these fisheries bounties were under consideration as to whether applicants were entitled. The Government did not raise any point as to the constitutionality of the law. On the contrary, there was no pretense that they were unlawful. Had there been anything in the question, counsel for the Government would have raised the point. On the contrary, Judge Story, no mean authority, expressly said that the law exhibited on the part of Congress "an intention to encourage cod fisheries of every sort," and by means of bounty. We come down to a later date. July 2, 1846, the Walker tariff was up in the House, in Committee of the Whole. A motion was made to repeal all laws allowing bounties on vessels engaged in the cod fisheries, and it was agreed to in Committee of the Whole, 101 to 77. (Congressional Globe, Twenty-ninth Congress, first session, pp. 1049–1051.) But the House refused to agree with the Committee of the Whole (ib., p. 1053), and the bounty was changed to a drawback by section 5 of the tariff act of 1846.

Now, there are other acts of Congress recognizing this principle. In 5 Statutes at Large a bounty was given by the Government in the shape of lands. What distinction can be drawn by the most astute and the most dissecting intellect between that which gives away the money of the people and that which gives away their land? Both are property, and yet land bounties have been a thing established from the beginning, and the Government with most liberal hand has taken of the lands of the people and, in the shape of bounties, given them for public purposes. It has given to individuals and to corporations to an extent that almost bankrupts figures, and all parties have agreed to the policy.

The COMPTROLLER. Is there not in Congress a complete power of disposition over the public lands?

Mr. MANDERSON. Certainly. But it is also under the same control as is the disposition of the money of the Government.

The COMPTROLLER. Is it not by express constitutional provision declared that Congress shall dispose of the public lands?

Mr. MANDERSON. Congress may dispose of public lands, but does that mean that it can give them away as bounties any more than it can give away the money of the country in order to provide for the general welfare and to encourage commerce? I reply to your question by asking another.

The COMPTROLLER. I think the one is specifically provided for and the other is not.

Mr. MANDERSON. The other is just as specifically provided for. Passing the proposition advanced by Attorney-General Black and others that Congress may appropriate money as a gift to any person, the disposition of both species of property—land or money—should be for a public purpose, and Congress is the judge of what is a public purpose.

The COMPTROLLER. That is what I want to know.

Mr. MANDERSON. As we have seen, the forefathers of the country were disposed to give bounties. A bounty in the shape of lands was given to Dr. Perrine to cultivate and propagate tropical plants, and much land, as I recall it, was given to him for that purpose, probably to great public advantage. We have given homesteads to our soldiers. That is a bounty in land, but we have given them bounties in money as well. If there is a distinction in the Constitution such as your honor suggests, that Congress may give away the people's property in the way of lands and not the people's property in the shape of money, why have we not stopped at giving our soldiers lands and refrained from giving money as bounties? Those who remember the days of 1861 to 1865 recall that enlistments and reenlistments were obtained by the Government of the United States paying out the people's money in the way of bounty, and no one hesitated to call it bounty. Was such money bounty unconstitutional? No one dare say so.

I shall not enter into the description of that which I see I presented fully in the argument in the Senate, showing what has been done by States, because I realize the distinction drawn by all the authorities between the constitutions of States and the Constitution of the United States, that the Congress is one of delegated powers, granted by the Constitution, and that the State legislatures are bodies which exercise all powers vested in the people, except where specially prohibited by the State constitution. For that reason, for the purpose of this argument, I shall not enter into the discussion of that question.

Now, let us see what has been said upon this important question by some great men of the olden times, distinguished in history, honored by their country, whose memories we revere and whose words of wisdom we read with respect and admiration. In 1791 Alexander Hamilton wrote a report, which grew out of the first tariff act. Let us see what he said.

> Bounties are especially essential in regard to articles upon which those foreigners who have been accustomed to supply a country are in the practice of granting them. The continuance of bounties on manufactures long established must always be of questionable policy, because a presumption would arise in every such case that there were natural and inherent impediments to success, but in new undertakings they are as justifiable as they are oftentimes necessary. There is a degree of prejudice against bounties from an appearance of giving away the public money without an immediate consideration, and from a supposition that they serve to enrich a particular class at the expense of the community

It seems to me that I have heard something like this in the later *day, but it* goes further than did Alexander Hamilton. He said these

suggestions come from doubts as to policy. The later day construer of the Constitution of the United States finds that his suggestions come from doubts of constitutional right. Your tariff reformer knows more of the Constitution than the men who framed it. What else does Hamilton say?

But neither of these sources of dislike will bear a serious examination. There is no purpose to which public money can be more beneficially applied than to the acquisition of a new and useful branch of industry—no consideration more valuable than a permanent addition to the general stock of productive labor. As to the second source of objection, it equally lies against other means of encouragement which are admitted to be eligible. As often as a duty upon a foreign article makes an addition to its price it causes an extra expense to the community for the benefit of the domestic manufacture.

That might be quoted by some Democratic orator on the proposition that the consumer pays the tax.

A bounty does no more. But it is in the interest of society in each case to submit to the temporary expense, which is more than compensated by an increase of industry and wealth, by an augmentation of resources and independence, and by the circumstance of eventual cheapness, which has been noticed in another place.

It seems to me that these be words of wisdom. Alexander Hamilton, in that report, never for a single moment or in a single sentence suggested that bounties were unconstitutional. He said that as between the two methods of encouragement they were the better in many instances, because they the more evenly and more equally distributed the burden.

In 1831 there came into executive place Louis McLane, who was the second Secretary of the Treasury under Andrew Jackson. He made a report on December 7, 1831, in which he said:

If it could be shown that the labor and capital of the United States required greater aid to shield them from the injurious regulation of foreign States, sound policy would rather recommend a system of bounties by which the duties collected from imports might be directly applied to the objects to be cherished than the accumulation of money in the Treasury. * * * The objects more particularly requiring the aid of the existing duties, upon the principles of this report, are believed to be wool, woolens, cottons, iron, hemp, and sugar, as comprehending those articles in which the agricultural and manufacturing industry are more particularly interested.

This sterling old Democrat did not seem to have any doubts in his mind about the constitutionality of a bounty. Never for a moment was he disturbed by that proposition, and that which they all labored upon, and that which they argued in their reports was the question as to which of the two methods, both of them constitutional, was the better policy—a payment by bounty or a collection of revenue by duty.

Here is another Democrat, Secretary Ingham, who was first Secretary of the Treasury under Andrew Jackson. I commend this to my Brother Whitney, who succeeded by his argument in leading astray Judge Sheppard, of the Court of Appeals, with the flock that followed the shepherd.

"The bounty on vessels," says Secretary Ingham, "employed in the cod fisheries is understood to be unlawfully obtained by some of those engaged in the mackerel fisheries. It is believed that a bounty on the fish cured or exported, without reference to the origin of the salt, would better promote whatever encouragement may be considered as proper to be given to the fisheries."

I read these extracts from the official reports that are in the Treasury Department, showing in that older and better time for expounding the Constitution what were the views of those distinguished states-

men of all political complexions upon the question of the constitutionality of bounties. Mr. Dallas, in 1816, gives us some very valuable statements. February 12 he writes of the various methods of encouraging industries—

Which, being recently or partially established, do not at present supply the whole demand for domestic use and consumption, but which with proper cultivation are capable of being matured to the whole extent of the home demand.

But it appears to have been the early and continued practice and policy of the Government to afford encouragement to manufactures and domestic products rather by the imposition of protecting duties than by grants of bounties or premiums.

No trouble in his democratic mind as to the constitutionality, but he says the principle seems to have been to encourage by duties rather than by bounties or premiums. I might read at great length and to my exhaustion and the exhaustion of your honor's patience extracts from many other distinguished statesmen, but I shall not take the time so to do.

I will give you but this quotation from Justice Story on the Constitution:

PAR. 965. The language of the Constitution is, "Congress shall have power to lay and collect taxes, duties, imposts, and excises." If the clause had stopped here, and remained in this absolute form (as it was in fact, when reported in the first draft in the convention), there could not have been the slightest doubt on the subject. The absolute power to lay taxes includes the power in every form in which it may be used, and for every purpose to which the Legislature may choose to apply it. This results from the very nature of such an unrestricted power. A fortiori it might be applied by Congress to purposes for which nations have been accustomed to apply it. Now, nothing is more clear, from the history of commercial nations, than the fact that the taxing power is often, very often, applied for other purposes than revenue.

It is often applied as a regulation of commerce. It is often applied as a virtual prohibition upon the importation of particular articles; for the encouragement and protection of domestic products and industry; for the support of agriculture, commerce, and manufactures; for retaliation upon foreign monopolies and injurious restrictions; for mere purposes of State policy and domestic economy; sometimes to banish a noxious article of consumption; sometimes as a bounty upon an infant manufacture or agricultural product; sometimes as a temporary restraint of trade; sometimes as a suppression of particular employments; sometimes as a prerogative power to destroy competition and secure a monopoly to the Government.

A thing of later development in the matter of bounties, the constitutionality of the payment of which has never been questioned, is the numerous bounties that have been paid to our shipbuilders. These bounties or premiums, or whatever you may see fit to call them, which the Congress of the United States has granted to shipbuilders who, in ships manufactured for the Government, shall exceed a certain rate of speed differ, I suggest, in no way, in principle, from the proposition that was made to the sugar producers.

The COMPTROLLER. Were they not direct contracts?

Mr. MANDERSON. So was this a direct contract, made by the highest contracting power in the Government of the United States, its legislative department. That was a contract to the shipbuilders by the legislative department. The Congress said: "Increase the speed of our vessels, and we will pay you a certain bounty per every fraction of a knot that you increase the speed." They said to the sugar people: "Grow sugar and supply the demand of this country for it to a greater degree than you do, and we will give you a bounty for every pound *that you* produce." Both were propositions made to the benefit of *private* individuals for a public purpose and for the general welfare.

Your mind is made up of very different material from mine if you can find in principle any difference or distinction between these two propositions emanating from the same source, designed for exactly the same thing, for a public purpose, for the advancement of the general welfare and the common defense of the United States. We have gone on under these contracts, and, without anybody raising question as to whether the warrant should be countersigned or whether the transaction coming from the Navy Department should be criticised, we have paid on the *Columbia*, $300,000; on the *New York*, $200,000; on the *Detroit*, $150,000; on the *Olympia*, $200,000; on the *Montgomery*, $200,000; on the *Marblehead*, $125,000; on the *Baltimore*, $106,000; on the *Indiana*, $100,000; on the *Minnesota*, $400,000; making $1,781,000; and for additional horsepower, $438,000; in all $2,219,000. That sum has gone into the pockets of those who build ships under contracts made with the legislative department of the United States, a contract no more sacred, having in it no more power, no more constitutional force, than that made with the men who embarked their all in this enterprise which it is now proposed to stifle and destroy.

Let us come to the question of sugar and see what has been suggested as to bounties for it. In 1864 the Commissioner of Agriculture alluded to the importance of the United States producing its own sugar, and he suggested bounty to encourage that result. He said:

> Considering that we pay nearly $100,000,000 annually for foreign sugar, and this may be made from the beet at less than half the [then] price of sugar from cane, it would seem to be the part of wisdom in the Government to encourage it in some direct form.

Mr. Ray, of New Hampshire, offered an amendment to the tariff bill of 1883 giving a bounty on sugar, but it was ruled out of order under the rules of the body, but no one raised the question of its unconstitutionality.

The Commissioner of Internal Revenue, Mr. Wells, in his report of November 25, 1882, refers to the internal-revenue tax on sugar and suggests its removal, but says:

> The objection would be the abolition of the protection now offered to the sugar interests of Louisiana and other States. This difficulty might be met by giving a bounty of say 2½ cents per pound on all home-produced sugar.

He proceeds to say that the slow development of production did not promise a home supply; that if it did the question might be different. He then produced a table showing the fluctuation of production. Proceeding, he said:

> I apprehend if sugar was not produced in this country Congress would not hesitate to remove the duty as the best means of reducing taxation. The present law gives to sugar planters four to five million dollars per annum. My position would be to give them this amount directly, and let the whole people have the benefit of the reduction of taxation, say $49,000,000, which would in this way be effected. The principle of paying a bounty for the encouragement and development of American industry is not new.

And it is not new, as I think I have pretty fully and satisfactorily shown.

In the estimation of the courts the pivotal point in all bounty legislation, that which controls in this giving away of the means of the people to a private party, is the question whether the gift is for a public purpose. Was this bounty for a public purpose? True, it goes into the pockets of individual producers. Who are they? Take this particular case of the money that has been paid and of the money that is to be *paid to the Oxnard Beet* Sugar Company of Nebraska. Are

they the final recipients of the bounty of the Government? Not so. It is true they are the claimants. It is true that the money in the first instance goes to them; but let me suggest to you that when you strike it from their reception you take it from the pockets of those who produce the sugar beets. You take it from the pockets of the agriculturists of that State, who, as one man, are demanding that the Government shall stand by its contract that was made for their benefit and that it shall not strike down an industry which promises to them so much of good.

What were the public purposes that led to the enactment of the bounty law? We had a surplus in those days that seems now to have gone glimmering. We had so much money that we did not know what to do with it. "It was a condition, and not a theory," in the language of another, that confronted us at that time. The first proposition was to reduce the surplus. The next proposition was to increase our domestic sugar production, to diversify agriculture, to render us independent of the world for sugar. Can there be any question about these being public purposes? If they are not, then no protective tariff that has ever been passed has any foundation in the Constitution of the United States except on the principle invoked by Jeremiah Black, which says that Congress can give away anything. To keep at home millions that we annually send abroad for sugar was decidedly a public purpose. The balance of trade is paid in gold, rather a precious commodity just now, one that we hate to see leave our shores; and the minds of statesmen, members of the executive and of the legislative branches of the Government, and the minds of the people are much concerned to know how we can best keep the gold to ourselves and not send it abroad. I have no question that we will pay out this year probably $150,000,000 in gold for foreign sugar. Do you think that is an overestimate, Brother Caffery?

Mr. CAFFERY. Oh, no.

Mr. MANDERSON. Probably at least $150,000,000; and I have no question that if the McKinley bounty law had been allowed to stand it would not have been many years until we should have seen the progress of diminution in the importation of sugar so great that not one dollar would be paid to foreign countries for the production of sugar. To cheapen the price of sugar was a public purpose. That is especially true when we consider that we are the great sugar-consuming country of the world. I remember saying to a gentlemen a year ago that we should produce probably 8,000,000 pounds of sugar in Nebraska from the growth of the beet. He said, "That is enormous; it is enough to supply the whole trans-Missouri country." I said, "My friend, do you realize the fact that in Nebraska alone—and we of the wild and woolly West are not particularly sweet-toothed—we consume 80,000,000 pounds of sugar every year?" No country, except Great Britain, consumes more sugar per capita than does the United States, and Great Britain consumes a greater amount per capita simply because of the enormous production of bottled and canned fruits, the marmalades and the jams, and all that sort of thing, which in very large quantity she exports to her possessions in the colonies and also to this country to a very great degree. With this enormous consumption of sugar in the United States is it not desirable that we should cheapen it if we can?

Another object was to open wider foreign markets for our products through reciprocity agreements. I realize that to Democratic ears I am trenching on dangerous ground when I make any reference to reci-

procity. Time was when reciprocity agreements with foreign countries were not laughed at. Time was when they were not whistled down the wind by the public orator and condemned by resolution in the Congress of the United States. Time was when they were carefully preserved, extended, fostered, and nurtured, to the great good, to the enormous benefit of this country. I believe that history will repeat itself, and that that time will come speedily again.

The public purposes I have named which actuated the passage of the act in question are not overcome by the fact that the money goes to private individuals. The money as to all other bounties that have ever been paid went to private individuals, to the soldier, to the shipbuilder, to the cod fisherman. The private individual has been the recipient of the bounty. But does that affect it? In the Sharpless Case, 21 Pennsylvania, the legislature authorized a common council to issue bonds of the city in favor of two railways, and taxpayers sought to enjoin their issuance on the ground that they were for a private and not for a public purpose. Judge Jeremiah Black said:

That a tax law must be held valid unless it be for a purpose in which the people taxed have palpably no interest, where it is clearly apparent that the burden imposed is for the benefit of others, and where it would be so pronounced at first blush.

It is argued that this case is one where it will be taxation for a private purpose, because the money levied will be, in effect, handed over to a private corporation. The right to tax depends on the ultimate use, purpose, and object for which the fund is raised, and not on the nature or character of the person or corporation.

To aid, encourage, or stimulate commerce, domestic and foreign, is a duty of the sovereign, as plain and as universally recognized as any other. It is a grave error to suppose that the duty of a State stops with the establishment of those institutions which are necessary to the existence of government, such as the administration of justice, the preservation of the peace, and the protection of the country against foreign enemies. It is in the interest of the city which determines the right to tax the people. It is not our business to determine what amount of interest the city has. It is enough for us to know that the city may have a public interest in the roads and that there is not a palpable and clear absence of all possible interest perceptible to every mind at first blush. All beyond that is a question of expediency, not of law, much less of constitutional law. Issue of bonds held valid, being for a public purpose.

That is a State case, and this that I propose to quote from, 10 Wisconsin, is a State case, but the principle in these cases thus decided in the States and the principle with reference to matters arising under the Constitution and laws of Congress is in this respect, as to whether a bounty or donation is for a public purpose, in no wise different, and the cases cited are on all fours with the matter under consideration. In 10 Wisconsin, page 224, the court said:

Public and individual interests are often so intimately connected and blended together that it is impossible to advance the one without at the same time advancing the other. There is no public good without at the same time a private benefit; they are inseparable. The former can not exist without the other. If the latter be not promoted it proves that it is not a public good, and to determine whether a matter is of public or merely a private concern we have not to determine whether or not the interests of some individual will be promoted, but whether the interests of the whole or the greater part of the community will be.

It is within this line of reasoning and suggested cases that the bounty law of 1890 falls. I shall not take time to make more than a mere reference to a very important case in 9 Michigan, which I presume is familiar to your honor, known as the salt-bounty case. I will read simply from the syllabus:

Where a bounty offered under a law of the State is actually earned, the reduction of the bounty by a subsequent amendment of the law does not deprive the party of the full *bounty given by the* original act.

The East Saginaw Salt Manufacturing Company brought a suit against the board of State auditors.

The court held that the relators had acquired a vested right to the bounty offered by the act of 1859 upon all the salt manufactured before the act of 1861 took effect, and that they could not be deprived thereof by the last-mentioned act.

It is well to note, I will say in passing, that these bounty acts upon the production of salt in the State of Michigan were without any limit in regard to time. As they read, the bounty was to be paid forever. Of course there was no question but that such a bounty law, having no limit in time, could at any time be repealed; but even where such a bounty law has been passed without limit of time, if, pending it and before its repeal, a manufacturer has earned the bounty under it, the repeal of the law before the payment of that bounty will not prevent its payment.

From 9 Michigan Reports I turn to 13 Wallace, in which there is another leading case upon this question. This case went up from the State of Michigan, and was based upon the same salt-bounty act. The syllabus is:

1. A law offering to all persons and to corporations to be formed for the purpose a bounty of 10 cents for every bushel of salt manufactured in a State from water obtained by boring in the State and exemption from taxation of the property used for the purpose is not a contract in such a sense that it can not be repealed.
2. Such a law is nothing but a bounty law, and in its nature a general law, regulative of the internal economy of the State, dependent for its continuance upon the dictates of public policy and the voluntary good faith of the legislature.

Now I turn to the opinion of Mr. Justice Bradley and read a portion of it:

That all corporations and individuals who shall manufacture salt in Michigan from water obtained by boring in that State shall be exempt from taxation as to all property used for that purpose, and after they shall have manufactured 5,000 bushels of salt they shall receive a bounty of 10 cents per bushel. That is the whole of it. As the supreme court of Michigan says, it is a bounty law and nothing more; a law dictated by public policy and the general good, like a law offering a bounty of 50 cents for the killing of every wolf or other destructive animal. Such a law is not a contract except to bestow the promised bounty upon those who earn it so long as the law remains unrepealed. There is no pledge that it shall not be repealed at any time. As long as it remains a law every inhabitant of the State, every corporation having the requisite power, is at liberty to avail himself or itself of its advantages at will by complying with its terms and doing the things which it promises to reward, but is also at liberty at any time to abandon such a course. There is no obligation on any person to comply with the conditions of the law. It is a matter purely voluntary, and as it is purely voluntary on the one part, so it is purely voluntary on the other part; that is, on the part of the legislature to continue or not to continue the law. The law in question says to all: You shall have a bounty of 10 cents per bushel for all salt manufactured, and the property used shall be free from taxes. But it does not say how long this shall continue; nor do the parties who enter upon the business promise how long they will continue the manufacture. It is an arrangement determinable at the will of either of the parties, as much so as the hiring of a laboring man by the day.

As against these decisions let me refer for a moment to the language of Judge Shepard in the District court of appeals in his dictum, in his uncalled-for, unbased dictum, in the Miles Case. He says:

That no amount of incidental public good or benefit will render valid taxation, or the appropriation of revenues to be derived therefrom, for a private purpose.

Now, put that remarkable sentence by the side of the authorities I *have* read and by the side of the authorities that I shall read.

Let me read this astonishing dictum again:

> That no amount of incidental public good or benefit will render valid taxation or the appropriation of revenues to be derived therefrom, for a private purpose.

On the contrary, Judge Black—I shall draw no personal comparisons between the two—says that no matter what the amount of the private benefit, if there is a public purpose it is sufficient to be full warrant for the passage of the law.

I do not know whether in the course of this somewhat rambling discourse I have suggested who is the judge of the public purpose—first, the legislature, the Congress; secondly, the courts. Judge Shepard in this language not only assumes the bounty law to be for a private purpose in order to arrive at his conclusion, but his remark also shows that even if there were some public benefit attached it will not suffice. That is in the teeth of Judge Black's remark:

> It is not our business to determine what amount of interest the city has. It is enough for us to know that the city may have a public interest in the roads, and that there is not a palpable and clear absence of all possible interest perceptible to every mind at first blush. All beyond that is a question of expediency, not of law, much less of constitutional law.

It is not possible that the case of the Miles Plantation Company on motion for a mandamus against the Secretary of the Treasury should be regarded by you as an authority. There still remain judges who are disposed to go beyond the requirements of the only issue before them, and in the refusal of Chief Justice Alvey of the District court of appeals to consider the question of the "constitutionality" of the bounty law we find a sufficient rebuke to answer all the purposes of a wise administration of the law. Mr. Justice Shepard's talk about the "constitutionality" of the bounty was mere dictum. The best possible thing that can be said of this effort to get beyond the requirements of that case is that the point was raised by the Government that it was not necessary to decide the case, and finally that it was a violation of the obligations of judicial duty and forbearance, and was so considered by Presiding Justice Alvey. (See also Cooley on Constitutional Law, second edition, p. 152.)

Against the dictum—for that is all it can be called—of Justice Shepard there is the decision of the second highest tribunal in the land, the United States circuit court of appeals, in 54 Federal Reporter, 804, holding the bounty statute to be a contract, repealable only because Congress may avoid any of its contracts (110 U. S. Rep., p. 643), and holding that bounty earned before repeal was an asset belonging to the sugar producer. True, it holds that Congress has the power to repudiate, but it has not repudiated for bounty earned because of (beet) sugar produced before repeal, and it also gave equitable compensation for all sugar to be produced from the crop of 1894. Had the statute of 1890 been enacted by a State legislature it might not have been repealed, because of the time limitation and the restriction on the power of States to impair the obligation of contracts (9 Mich., 327; 19 Mich., 274), which does not apply to Congress (110 U. S. Rep., p. 643).

So that, as against the dictum of Justice Shepard, of the District court of appeals, we have the decision of the second highest court in the land, holding that as to bounty earned there was a contract and a vested interest which agrees with 9 and 19 Mich. (supra) to that extent. In the Calder Case the court said:

> In our opinion the bounty, *so called* in the statute, is not a pure gratuity or donation *by the Government, but* was intended to be and is, in fact, a standing

offer of reward and compensation to sugar producers to encourage and stimulate them in the otherwise losing business of producing sugar in the United States. When a producer of sugar accepts the offer and complies with the statute it would seem to be as much a contract as it is possible for any citizen to make with the Government. All the elements of a contract are present—the terms, the consideration, and the lawful object. It is true that the Government can repeal the statute and refuse to pay the bounty earned upon sugar that has been produced under the promise and within the statute, but so could the Government do with any admitted contract for any public work. The appellants contended that the bounty offered by the Government was a pure gratuity, without consideration, revocable at pleasure, and that until payment is actually made is not property. The claim of Calder, who accepted the terms of the act for the year 1891 for sugar produced that year, is a claim arising under a contract, a just claim and one that the Government can not avoid otherwise than by repudiation. * * * It is an actuality, a vested interest.

Having a power to avoid its contracts which the States have not (110 U. S. Rep., 634–643), and having bound itself by a contract and desiring more revenue, Congress thought proper to repeal the act of 1890 and to give the sugar producers damages, or equitable compensation in part for the injury which the repeal would entail. The States having given Congress a greater power than the States possess in regard to impairing the obligation of contracts, is it even reasonable to suppose that Congress would have been given that power unless it was supposed that it had and would exercise the power to apply money as it might deem proper to repair damages which might ensue under avoided contracts?

The voting of money to private parties does not make a statute for a private purpose, and, as against the dictum of Judge Sheppard on the point of the power of Congress to tax, we have the opinion of the highest court to the effect that the "power of Congress to tax is a very extensive power. It is given in the Constitution with only one exception and two qualifications, viz, Congress can not tax exports, and it must impose direct taxes by the rule of apportionment and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject and may be exercised at discretion." I quote from 5 Wallace, 471.

We should all the time keep in clear view the distinction between collecting or raising a tax and the appropriations by Congress of the the money thus raised.

Now I come to the consideration of a case which I think has been more misrepresented, more misconstrued, and more distorted than any other case I have ever read of. I refer to the decision of Mr. Justice Miller, reported in 20 Wallace. That eminent judge, for a quarter of a century before his death, was my close and dear friend. I practiced law before him when, as a justice of the supreme court, he held court in the district of Nebraska, and I saw much of him after my lot called me here. I have talked with him by the hour upon those subjects on which lawyers are very apt to converse when they get together. I know that Mr. Justice Miller felt that his decision in that case had been frequently used for purposes that he never in the world would have countenanced. You can take certain parts of his decision and, stripping the sections from their surroundings, you can prove some things for your purpose; but Mr. Justice Miller in the case in 20 Wallace said nothing that militates in the least against the proposition for which we are contending here. What he says about bounties to private enterprises will be controverted by nobody. What he said that *is applicable* was that it is not easy in every case to draw the line and *decide* what is and what is not a public purpose. He simply held that

an issue of bonds in that particular case in favor of a single manufacturing company could not be said to have been for a public purpose, and it was on that point that he decided the case. What he said about granting bounties for private purposes is sound law and is not controverted, but it has no application to any act that has passed granting a bounty or an emolument for a public purpose. He said that the city of Topeka had no constitutional right to issue bonds to establish a bridge-manufacturing company; that that was no more for a public use and purpose than it was to establish a shoe factory. The bonds were issued under the authority of a general act "to incorporate cities of a second class," and especially of an act "to authorize cities and counties to issue bonds for the purpose of building bridges, aiding railroads, etc." The object of the bonds issued was to encourage the company in its design of establishing a manufactory of iron bridges in Topeka. The common council of Topeka issued the bonds, and in an action by the holders on the coupons on the bonds for interest there was a demurrer by the city which raised the question whether the legislature had power to enact the statute. A clause in the constitution of Kansas said that "provision shall be made by general law for the organization of cities, etc., and their power of taxation, etc., shall be restricted so as to prevent the abuse of this power." Defendant insisted that the issue of bonds violated this clause. That was the first proposition. And, second, it was held that the bonds were not for a public purpose. On the hearing of the demurrer, the demurrer was held good and affirmed on the second point raised, that the bonds were not for a public purpose.

The court notices the division of sentiment existing in State courts on the proposition that legislatures have the power to authorize cities to lend their credit to build railroads, and concedes that the preponderance of authority is in favor of the existence of that power. The court says:

> In all these cases, however, the decision has turned on the question whether the taxation was for a public purpose. Those who came to the conclusion that it was held the laws for that purpose valid. Those who could not reach that conclusion held them void.

I read from his language:

> In all the controversy this has been the turning point. It may not be easy to draw the line in all cases so as to decide what is a public purpose in this sense and what is not. The courts can only be justified in interposing when a violation of this principle is clear and the reason for its interference cogent.

And the court said that in deciding whether "in a given case the object falls upon the one side or the other of this line they must be governed mainly by the course and usage of the Government."

What better guide can we have here if there be doubts, when, as I show, from the beginning of the Government these bounties have been advocated, they have been maintained, they have been paid; showing, as I believe I do, that under the Constitution there is no distinction between protection by way of impost duty and protection by way of bounty as a constitutional question, not as one of policy; showing, as I believe I am safe in saying, that the usage and custom of the Government have been in the direction of this instance? That is the reason, as suggested by Mr. Justice Miller in this decision, why this principle should be maintained.

The court argued that while a benefit may have resulted to the local public of the town, it was not unlike the local benefit resulting from

a loan for the erection of a sawmill (60 Maine, 124), or to aid persons in Boston to rebuild their houses lost by fire, or to aid private schools (103 Mass., 74, and 24 Wis., 350). This is all there is of the opinion. It went on the sole ground that the bonds were not issued for a public purpose. No one disputes the soundness of the principle here laid down; the controversy goes on over the question as to which side of the line any given case falls.

The case of Parkersburg *v.* Brown (106 U. S., 487) involved precisely the same point as 20 Wallace, the validity of municipal bonds issued in aid of a foundry and machine works, and decided (p. 501) on the ground that it was not for a public purpose.

The same may be said of Cole *v.* Lagrange, 113 U. S., 1.

The COMPTROLLER. Do you not think there is conflict between Judge Miller and Jere Black?

Mr. MANDERSON. Oh, yes; a very decided conflict. Judge Black goes to the extent of saying that Congress can give all the money it pleases to anybody for any purpose; and Mr. Justice Miller says it must be for a public purpose. I recognize that difference. I confess that, with an extravagance which is perhaps incident to my nature, my sympathies as well as my judgment are with Attorney-General Black rather than with Justice Miller, but the last named would have had no difficulty with the question with which you are now struggling.

I refer to a case in 19 Mich., pages 275–289. I shall not take the time to go over the opinion. It holds in general terms that—

> Where exemptions or bounty is not for a specific time, it is either permanent or entirely under State control. It can be repealed by legislature whether time for it to run is specified or not, but rights may arise under it to the individual who has advantaged himself of its provisions.

I also refer to the case of Newton *v.* Commissioners, 100 U. S., 548, which was a suit involving the question of the county seat in Mahoning County, Ohio, between Canfield and Youngstown, and does not militate in the least against our position here.

I referred in opening, in giving somewhat the history of legislation on this subject, to the fact that this was a time agreement; that the Congress of the United States said that until 1905 the payment of this bounty should continue to the sugar producers. They fixed in the original act a duration, a limit of the time for it to continue in operation. Now, the object which Congress had was to attract capital and induce it to invest in an industry which this Government, following other nations, desired to see built up in this country. I know I am asking a very great deal of you, who are a busy man, and this is the season of the year when one should rest, but I am going to leave this speech made by me in the Senate with you for your consideration, and hope that if you will read no other part you will read such history as there is here of the efforts that were made and of the sacrifices that attended the effort to embark upon the production of sugar from beets in continental Europe. There is no more interesting page of history—I do not mean that I have presented it in an interesting fashion—than that which recites the determined, Napoleonic effort of the great Napoleon to establish the sugar-beet industry in France. And the great German nation, the admiration of the world in many respects, dominated as it is by wonderful power and dominated by a wonderful intellect, with a widespread intelligence, with an appreciation of things such as I suppose characterizes no other nation in the world—the great German nation, in its wonderful effort to produce the beet that has been so successful, gives to us a most interesting lesson. I said to

your honor that the State of Nebraska in its effort to advance this tremendous interest had established a bureau of sugar-beet culture. That bureau has issued many bulletins. Here is a most interesting one. I present it to you, not that it has any particular business with the matter which we are now discussing, but as matter of interest in connection with this great question, the magnitude and importance of which few people comprehend. This is, of the bulletins of the sugar-beet series, No. 7.

The German Government having made tremendous strides, so that from a production of nothing years ago it has at last reached the point where it supplies all of its own needs and the needs of many other parts of the world, this country included, saw the passage by the American Congress of this law of 1890. The Germans are always alert and keen, and know what is being done elsewhere. When they understood that under the fostering care of that law certain beet factories had been started in Nebraska, they sent a German professor over here to spy out the land. He returned to his own country, and Dr. Max Hollrung, of Halle, Germany, made his report. A German at Grand Island, who had relatives abroad, obtained a copy of the original report made by Dr. Hollrung to his Government, and Professor Nicholson, who is in charge of the experimental school or station in Nebraska, being himself a fair German scholar, translated it. I have it here.

His report is characterized by that wonderful care and attention to details which characterize about everything that the German undertakes, especially when he is working for his Government. This gentleman evidently spent much time in Nebraska. He gives the character of the State; he speaks of it as having only thirty years ago figured on the map as a part of what was called the Great American Desert. He gives the number of acres of land, 48,000,000 acres of land, in the State; he tells its characteristics by counties; he gives the nature of the soil by most careful analysis, showing in perhaps twenty different places here, from analyses made by him, the percentage of fine gravel, of coarse sand, of fine sand, of finest sand, of silt, and of organic matter. He did important service for us in thus acting for his Government. He gives the temperature, the rainfall. He reviews all the natural conditions for establishing beet culture; he gives the history of the starting of the two factories at Grand Island and at Norfolk.

The COMPTROLLER. When were they started?

Mr. MANDERSON. My recollection is that one was started in 1890 and the other in 1891.

The COMPTROLLER. After the passage of the McKinley bounty law?

Mr. MANDERSON. Yes, sir. The Grand Island factory was perhaps started before the passage of the McKinley bill, and the Norfolk factory afterwards. The first factory at Grand Island was commenced under the impulse of a State bounty of 1 cent per pound, but before the completion of the factory and before a pound of sugar was made the State legislature unfairly repealed the bill, actuated to do so, probably, by the Federal bounty promised in the McKinley bill. Both factories, however, were completed and made their sugar under the sugar-bounty law of 1890.

Dr. Hollrung speaks further of the cultivation of the land by the farmers, of the make-up and characteristics of the agriculturists, to a fraction of a cent what it costs for preparing the ground—harrow-

ing, drilling in the seed, rolling, hand hoeing, machine hoeing, transplanting and thinning, loosening the beets, pulling, topping, etc. He goes into the question of manures, their cost and their necessity. He speaks of American labor, the price that is paid, giving statistical detail concerning it, and he shows the amount of beets produced and the amount realized in dollars and cents by those who produced them. No man could write a more exhaustive treatise upon the subject than that written by this German educator, procured to do so by the German Government, alarmed by this threat at their chief industry.

I wish to read just one or two sentences, and I do it as part of a political argument on protection in the hope of converting you from the error of your political ways, even at this eleventh hour. [Laughter.]

Mr. DODGE. You had better address it to Senator Caffery.

Mr. MANDERSON. Brother Caffery was converted long ago.

Mr. CAFFERY. What do you call conversion?

Mr. MANDERSON. You are giving fruits meet at least for repentance, if not showing conversion.

Mr. CAFFERY. I have not perceived it.

Mr. MANDERSON. Now, what does Dr. Hollrung say?

He who examines the long list of reports on an attempt to introduce the beet-sugar industry in the United States since 1830—

There have been many attempts made in this country that failed. They failed in Delaware, they failed in Illinois, they failed in Virginia. It was not until these people, educated abroad and carefully skilled, started with plenty of money to put in the enterprise that they were able to produce sugar beets successfully—

He who examines the long list of reports on an attempt to introduce the beet-sugar industry in the United States since 1830 must be of the opinion, contrary to Professor Paasche—

Who was another German who came here and explored—

that this is not a private enterprise, calculated to flourish at the expense of the public, but a new impulse for making North America independent of the sugar import from foreign countries. The Monroe doctrine, America for Americans, originally only used in a geographical sense, has long ago been transferred to the fields of political economy.

I have never heard any tariff orator who put the proposition of protection and the sentiment concerning it much better than that.

To be independent, independent in every way, to owe everything to one's self, is the aim, the national pride, of the American.

I am glad that this observing German noticed that characteristic trait in some of us. I wish it pervaded all.

The McKinley bill is the expression of this sentiment, and very strangely—

Now, here is something that strikes this German with amazement and astonishment, and yet he observed a truth that you are bound to confess, although you do not want to—

The McKinley bill is the expression of this sentiment, and very strangely we find that the American Democrat is more a nominal than a real opponent of this Republican creation.

That is so, is it not?

Mr. CAFFERY. Not in Louisiana.

Mr. MANDERSON. The people of Louisiana are indeed very rapidly becoming protectionists.

Mr. CAFFERY. You could not, even with a bounty, fool us on the doctrine of protection.

Mr. MANDERSON. You wait. You will change your views and your ways, or your people in Louisiana will repudiate you. This is a cause that grows. Dr. Hollrung goes on to say:

It is really immaterial to investigate in what way the American pursues his beet culture and beet-sugar industry. The principal question for us is whether beet culture increases or not and whether there is a prospect of its continuance.

That is the point of interest for the German Government.

According to the statement of the archives of commerce the tract of land planted with beets amounted in North America in 1881 to 7,155 acres, in 1892 to 17,344 acres.

The beet sugar production was:

	Pounds.
1889	5,170,000
1890	7,000,000
1891	12,000,000
1892	26,568,190

In 1893 it is estimated at 30,000,000 pounds.

In 1894, on account of the failure by the drought, there was a decrease, and I think in 1895 there will probably be produced between 40,000,000 and 50,000,000 pounds.

Mr. DODGE. Will you give me the figures for 1893 again?

Mr. MANDERSON. I have not the figures for 1893; I guessed at 1893.

Mr. DODGE. About 30,000 acres?

Mr. MANDERSON. No, pounds; about 30,000,000 pounds.

Mr. DODGE. Can you give the number of acres? You spoke of 17,000 acres.

Mr. MANDERSON. Seventeen thousand acres in 1892.

Mr. DODGE. Can you give the acreage in 1893?

Mr. MANDERSON. As to acreage I can not tell. I think there was an increase of acreage in 1894, but a decrease of crop on account of the drought.

Dr. Hollrung proceeds:

This shows a slow but steady increase in beet-sugar production; the latter, however, occupies so humble a position that its competition can hardly be said to be felt in Germany. The further development of the American beet-sugar industry principally depends on the ability of the sugar factories to keep up their payments of $5 per ton for beets for any length of time. They will do so as long as the Government pays a preminm of 2 cents per pound of 90 per cent sugar to the manufacturer of domestic sugar. If this premium is withdrawn without compensation, the beet-root-sugar industry of America will probably be ruined in spite of its present prosperous condition.

But this is departing very materially from the matter in hand. I was speaking of the time limit given to these people. The courts appear to attach importance to a statute containing a time limit. I quote in that regard 19 Michigan. A portion of the opinion that decided the Saginaw salt case in 19 Michigan was devoted to a discussion as to the effect of the omission of a duration clause, and the case evidently went off on that point and on the point as to the danger of and power to exempt property from taxation. If this is not so, where the necessity of discussing it at length, as Judge Cooley does, and as was done on appeal? (15 Wallace, 373.) The evident theory was that the act of 1859 having failed to give investors a promise of time, it was like any ordinary statute, repealable at any time, and of course amendable at any time, and it was amended in 1861, so as to affect the plaintiff. Why did the court, addressing itself to the act of 1859, say that there was in it "no pledge that it

should not be repealed at any time"? And why say that the act of 1859 did "not say how long the act should continue"?

The negative conclusion to be drawn from all this reasoning is that if a promise of a fourteen-year exemption or payment had been held out the power to disturb it would not have existed; that such a clause would have made it a contract, or something in the nature of one, as to all those who invested. In other words, it would then, to use the language of the court, have been something more than "a mere bounty law," repealable at any time as to those only who had invested on the faith of the time promise and the bounty agreed to be paid.

If there is no legal signification to be attached to the statutes fixing a time limit, why insert it? Is it a mere fraudulent inveigling device, to be used by Congress or a legislature to attract benefits or secure advantages, only that men may be plunged into distress and bankruptcy? It ought not to be the law that snares and pitfalls may be laid and dug for capital at the pleasure and caprice of legislative bodies, the acts of which concern the public welfare and affect the honor of the State. The act of 1890 was an open and avowed invitation to capitalists to come forward and invest their money on the promise held out to them. It was a solemn pledge, so far as one Congress can bind another, that if the sugar planters and the beet and sorghum people would hazard new capital, would consent to risk their money in the meritorious national object of developing the sugar industry, Congress would perform its promise, and not punish them for their credulity and their manly efforts to comply with their part of a statute which contained all the elements of a contract.

I quote from 3 Dallas, page 394, using the language of the court:

> It is not to be presumed that the Federal or State legislatures will pass laws to deprive citizens of rights vested in them by existing laws, unless for the benefit of the whole community and on making full satisfaction.

That is what prompted Congress in the act of March 2, 1895. It proposed, it believing it for the benefit of the whole community to abandon this bounty, that it would give to those who would have been the recipient of the bounty, full satisfaction for the departure from the bounty.

I desire here, as bearing somewhat upon this question, to quote from President Fillmore, who, in 1842, said:

> I make a distinction between encouragement and protection of manufactures. It is one thing for the Government to encourage its citizens to abandon their ordinary pursuits and engage in a particular branch of industry, and a very different thing whether the Government is bound to protect that industry by laws similar to those by which it encouraged its citizens to embark in it. In the first case, there is no obligation on the part of the Government. Its act is entirely voluntary and spontaneous. It may, or may not, encourage the production or the manufacture of a particular article as it shall judge best for the whole community. Before attempting it the Government should weigh well the advantages and disadvantages likely to result to the whole and not to the particular class which may be tempted to engage. If a particular branch of industry is so important in its bearings upon the public wants, on account of its providing in time of peace for some necessary article in time of war, then the Government may and should legislate with a view to encourage its establishment. When the Government has decided that it is best to give the encouragement and the citizen has been induced by our legislation to abandon his former pursuits and to invest his capital and apply his skill and labor to the production of the article thus encouraged by the Government, then a new question arises, for another party has become interested, and that is whether we should by subsequent legislation have withdrawn our protection from the citizen whom we had thus encouraged to embark his all in a particular branch of business for the good of the public, and threaten him with bankruptcy by our unsteady, not to say perfidious, legislation. Our act in the first

instance was free and voluntary. We might give the encouragement or not, but, having given it. the public faith to a certain extent was pledged. Those who accepted our invitation and embarked in new pursuits did so under the promise on our part that the encouragement thus given should not be treacherously withdrawn and that we would not tear down that which we had encouraged them to build up. This is the just, clear, and broad distinction between encouragement beforehand and protection afterwards. The former is voluntary, depending wholly upon considerations of public policy and expediency, the latter was a matter of good faith to those who had been tempted by Congress to trust to the national honor.

While it might be conceded that the law of 1890 was not, for the full unexpired time, or until 1905, a contract, yet the question would remain whether, under its provisions and fair construction, after acceptance thereof by investment, annual issuance of licenses, and filing of bonds, a contract did not arise for the year 1894.

The COMPTROLLER. That is, provided the act in itself was valid.

Mr. MANDERSON. Of course; provided the Supreme Court of the United States shall not declare the law a nullity by saying it is unconstitutional.

Basing this claim on the legal effect of a license, there is more or less authority at hand to show that the last Congress thought it irrevocable for the year 1894, because not all licenses are revocable under all circumstances and at any time.

I quote from 14 Serg. and Rawle, 267–272.

A license may become an agreement for valuable consideration, as where the enjoyment of a license must necessarily be preceded by the expenditure of money, where the person licensed has invested capital on the faith of it. In such a case the licensee becomes a purchaser for valuable consideration. Such a license is a direct encouragement to expend money, and it is against all conscience to annul it as soon as the benefit expected from the expenditure is beginning to be seen. The expenditure of money turns the license in an agreement in equity. I quote from 14 Serg. and Rawle, supra.

That is precisely what the law promising the bounty and the issuance of sugar licenses did, and large sums were invested on the faith of previous payments and the law and licenses of 1894. The licenses were for specific periods and the producers could only be remunerated by enjoying the benefit of the license, through the relief which Congress granted in 1894. (4 Watts Rep., 317.)

Factories had been erected, money invested in land, material, and supplies; contracts had been made for the raw material on the bounty basis, and Congress felt that it had no right to falsify the expectations which it had created. (5 Maine, 9; 7 New Hamp., 237; 11 N. H., 102; 15 Ohio, 247; 19 Indiana, 10.)

Such is the reasoning also in the bridge case in 105 U. S., 470. The court there regarded the act of Congress authorizing the construction of a bridge over the Ohio as a license, revocable, however, in that particular case without liability for damages. This was so held, however, only because of the wording of the reservation of power to withdraw the consent or revoke the license contained in the act of March 3, 1869, which was before any money had been expended.

A resolution of Congress contained the license to bridge with a certain span and in a certain way:

But Congress reserves the right to withdraw its assent hereby given in case the free navigation of said river shall at any time be substantially and materially obstructed by any bridge to be erected under the authority of this resolution, or to direct the *necessary modifications* and alterations of said bridge.

After the passage of this resolution a company began the construction of a bridge and expended a large sum of money, and two years after the passage of the resolution (March 3, 1871) a law was passed by Congress making it unlawful for the company to proceed unless certain things were done which largely increased its cost, and power was given the company to file a bill in equity to determine, first, whether the bridge, down to 1871, had been constructed according to the act of 1869, and, second, to ascertain the liability of the United States, if any, by reason of the change ordered made.

The company completed its bridge and filed its bill, which was dismissed and on appeal affirmed. But that decision went on these grounds: That the liability for damages being the controlling question and the power to revoke the license to build having been expressly reserved, upon Congress was thrown the sole power to determine whether the requirements were all that due protection for free navigation demanded; that Congress might in its discretion have ordered an investigation, but not having done so, its power was supreme under the reservation of power; that the license was given only on condition that it might be revoked at any time, which made the company assume all risks, accidents to a revocable license. It was a risk, under such a law, voluntarily assumed. Congress might abuse the power it had expressly reserved, but it would be doing so under the limits prescribed by it in the act of 1869.

It is quite clear from the opinion in this case that a license in a general law, such as is found in connection with the act of 1890, was binding and irrevocable after investment of money and issuance of the license during the time it had to run. Congress recognized this as good law in the act of 1894. The court said, referring to the act of 1871:

> Congress fully recognized the obligation resting upon every government, when it is guilty of a wrong, to make a reparation. Exemption from suit does not necessarily imply exemption from liability.

It held that by the act of 1871 Congress gave the court power to determine whether it had done a wrong, and the court held "no," because it had not exceeded its reserved power to revoke the license; hence that there was no liability by suit in that case, whatever equity there was to ask Congress for an inquiry and damages. Even in that case Justice Miller wrote a very strong dissenting opinion, holding that the court had the power to ascertain the damages. Justice Field held that the change required in the construction of the bridge and the revocation of the license was spoliation; that there are many ways of taking property other than by appropriation that were within the constitutional inhibition. Mr. Justice Bradley also dissented.

It will be noted the case was decided on the point of the reserved power to revoke at any time. But for that power it is quite clear that the court would have held the license to build irrevocable. There was no power to revoke reserved in the act of 1890 during the time the licenses of 1894 had to run.

This much, then, on the point as to the liability of the Government under the license feature of the act of 1890. It goes upon the legal theory that if the Government had sovereign power to annul the law of 1890, yet as to licenses granted in 1894, and as to applications therefor and bonds in due form on file, the licenses were irrevocable and the Government was legally or equitably bound, and Congress by the act of 1894 so legislated. Standing alone, the bare license might

not provoke this liability, but taken in connection with the promise contained in the law and the investments made under both, the element of irrevocability attached to the license for the period granted, and in equity this principle should apply to licenses applied for and bonds filed.

That Congress may make contracts will not be questioned. Without this power it would be deprived of sovereignty and without its exercise it would be very difficult to conduct its ordinary administrative affairs. (3 Peters, 116–127; 16 Howard, 389–428.)

The line of reasoning adopted in the Ohio bank cases is apparently adopted in Calder *v.* Henderson, 54 Federal Reporter, page 804, where the court says:

> When a producer of sugar accepts the offer and complies with the statute, it would seem to be as much a contract as it is possible for any citizen to make with the Government. All the elements of a contract are present—the terms, the consideration, and the lawful object.

This being so, there is no limit on the exercise of that power except that found in the fundamental law, or where considerations of public policy intervene under the common law. (16 How., U. S., pp. 429–430–431; 7 Cranch, 164; 3 Dallas, p. 388.)

The general rule is that one legislature may repeal any act of its predecessors, and that one legislature may not abridge the power of a succeeding one, but the exception is that if an act be done under a law a succeeding legislature can not undo it. Where the law is in its nature a contract, as the bounty law was, a repeal of that law will not divest rights. (6 Cranch, p. 135; 54 Federal Rep., p. 804.)

In this case beet sugar had been produced prior to repeal, and as to both cane and beet sugar for 1894, investments had been made, licenses granted, bonds filed, and large sums expended to grow a crop on the faith of previous payments and the law and licenses. Between individuals the bounty law would have been binding as a contract, as well as by way of license during 1894, and common-law rules govern it. (12 Wheaton, 559.)

There are acts which the Federal or State legislature can not do without exceeding its authority. There are certain vital principles in our free republican Government which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law. The restraining power on Congress or a State legislature need not be expressed. Certain acts would be infractions of the genius, nature, and spirit of the common law, and of reason and a sense of justice, as well as of the Constitution. (3 Dallas, p. 388.) As the courts well say, there ought to be some restraint somewhere on legislative power or disposition to break contracts and bring down severe losses on the heads of those whom it has ensnared by legislation. (6 Cranch, 67–135; 4 ed. Story Eq. Juris., sec. 1399.)

There is no limit to the exercise of the power to contract except that found in the fundamental law or in that which is founded on public policy or embedded in the common law. Contracts may bind succeeding legislatures. (16 How., supra, 329–430–431; 7 Cranch, 164; 3 Dallas, p. 388.) And this is so even if the contract works a public injury. (16 How., supra, p. 429.)

Whether a contract in any given case should be made is a matter for the exclusive consideration of Congress, and it is the exercise of its undoubted power of sovereignty when one is made. (16 How. U. S., *p. 428.)*

The question is, Are the words used words of contract; is the language in the nature of a contract? In determining this question it makes no difference whether the instrument is in the form of a law, or of a covenant, or agreement of an agent acting for the Government. (16 How. U. S., p. 433; 54 Federal Reporter, p. 804.) And the contract may be embraced in a general as well as in a special law, as was the case just cited from 16 How. Rep.

Now, what was the issue in the case of the Ohio Bank Cases, 16 How. U. S.? The contest waged was over the legal effect of section 60 of a general banking law passed in 1845, which provided that every company accepting its provisions should set off 6 per cent of its net profits, the same to be in lieu of all taxes to which the company would otherwise be liable. In 1851 a general act was passed making banks pay the same taxes as other property, which rate was in excess of that provided in 1845. Query: Was the bank liable to be taxed under the act of 1851? Held not; that the general act of 1845 was special as to, and a contract with, each bank accepting its provisions. The court said:

> Every valuable privilege given, and which conduced to an acceptance of it, is a contract that can not be changed where the power to do so is not expressly reserved. It is a consideration not to be overlooked. The law is otherwise as to public corporations, municipal, etc. This is a vital distinction.

Our sugar producers are private individuals or private companies, and why is not the same rule applicable? The banks were granted privileges, valuable or otherwise, depending on circumstances, and so were the producers of sugar.

It is said there must be a consideration for contracts. Grant it. What did the banks give? They simply agreed to give the community a sound and stable (money) circulation. That was a public and not a private benefit. The basis of the law of 1890, the implied contract, contained these considerations moving to the public from the producers—that if they would more largely invest their money in the domestic sugar industry, thereby accelerating an increased production, which would naturally tend to cheapen a household necessity, keep some of our gold sent abroad annually for it at home, diversify agriculture, and give labor employment, a bounty would be paid. These were the implied public considerations, and they were just as valuable, and rested no more in mere promise, as the increase in domestic sugar production has disclosed, than was the promise to furnish a sound, stable quantum of circulating notes. When the banks accepted the privileges granted, to make money, a contract arose and the tax rate attached as a part of it. When the sugar producers invested their money, took out licenses, and filed their bonds, a contract arose. By the act of 1894 Congress recognized it and has directed payment. The act of 1890 went upon this—that to secure results desired by the Government inducements must be held out. In the case of the banks, their privileges or chances to make money were limited to twenty years, the time specified by a general incorporation law. In the case of the sugar producers the time granted them was fixed at fourteen years. Time and the tax rate (on conditions) were the inducements in the one case, and time and the bounty guarantee (on conditions) were the inducements in the other case. A sound currency was desirable in the interests of the public, and our annual drain of gold for foreign sugar, cheaper sugar, and suppression of "surplus" revenue were of public concern.

Besides the considerations moving to the people, above stated, there was connected with the bounty law, as a part and parcel of it, section

3 of the McKinley Act. Under those agreements our farmers and manufacturers secured foreign markets in rival sugar-producing nations for over $40,000,000 of our products in excess of what we would have had but for those agreements. This alone was ample consideration for the bounty law. It enabled our taxpayers to cancel the whole bounty paid, with over $15,000,000 remaining; and our people were able, in the reduced price of their sugar, to keep in their pockets over $150,000,000—compared with the duty policy which had prevailed for over a century. The value of the consideration which accrued under the bounty law or free-sugar policy is now fully appreciated by our cattle and meat interests. The free-sugar law was the basis of our reciprocity agreements and they fell with a repeal of a bounty law. It is of interest to note that the value of the agreements is placed at $75,000,000 per annum with Europe alone!

In the Ohio bank cases, as often as the tax rate was lessened to favor a bank and serve the public, increased taxes were thrown upon others; and so money from Texas was taken for the bounty—in return, however, for which the people got cheaper sugar and saved far more than the bounty cost. No bonus or money consideration was necessary. (16 How. U. S., p. 390, 391.)

It will not do, therefore, to say that there was no consideration for this bounty law, contract, or agreement, nor will it do to say that the money raised to liquidate it was for a private and not a public purpose.

I have a large amount of material here, some of which I have already used and have enlarged upon, and other matter that is of a new character, which I would gladly present, but with your permission, as I can present it very quickly in typewritten or printed form, and as I feel that I am wearying you and know very well that I am wearing myself——

The COMPTROLLER. Take your own method.

Mr. MANDERSON. I shall, with your leave, add much of this matter to my remarks, and will insert it here.

What were the primary or leading objects of the so-called bounty paragraphs, the "free raw sugar clause" and section 3 of the tariff act of 1890? For they all go to make up the unit of the policy. Was it to simply pay our domestic sugar producers 1¾ and 2 cents per pound? Not at all. That was only an "incidental" feature of the whole policy. There was a "surplus" of revenue and Congress took this as one method of reducing taxation. And it desired to do this without crippling a national industry of great public importance to the nation, and so, as Mr. Carlisle said, "as a compensation" for the encouragement to sugar which duty had given, this policy was adopted.

But that was only one feature of the unit in a policy which was broad and comprehensive, its chief feature being commercial. We also desire to bring sugar production at home as rapidly as possible up to the point of furnishing a home supply, and so keep our over $100,000,000 of gold here which we were sending abroad annually for foreign sugar; to cheapen the price of sugar; to diversify agriculture, and, above all, to open wider the doors of foreign markets to our agricultural and other products. Section 3 of the tariff law, in connection with the bounty and the "free" raw sugar paragraphs, enabled this country to lay the foundation for us to obtain reciprocal commercial agreements.

Congress, not for the first time, was seeking important commercial advantages with foreign nations. (See 143 U. S. Rep., 685, etc.) To attain these, "*free*" *sugar* became the basis of a legislative policy.

Reciprocity in turn was based on that policy. The desired power under which Congress sought to "regulate commerce" would not exist without section 3, known as the reciprocity clause of this sugar or commercial policy, and the enactment of the whole unit was the lawful exercise by Congress of its power to "regulate commerce," and section 3 has been declared constitutional by the highest court. (Fields *v.* Clark, 143 U. S. Rep., p. 694).

The power in Congress to "regulate commerce" is expressly granted, and here was an exercise of that power in such a way as Congress deemed best. We submit that it is not for courts even to pick such a policy to pieces and destroy it, because forsooth political or economic differences exist as to the wisdom of a part of it. The courts have no right to say that Congress shall not, in order to attain commercial objects, order seven or ten millions or any other sum paid out in pursuance of its direction and its power "to regulate commerce." And if courts shall not do so, shall an officer of the executive department?

What is the limit on the power of Congress in respect to the application of taxes raised by constitutional legislation? May not Congress, in pursuance of its power "to regulate commerce," make sugar "free" and maintain its domestic production in order to put itself in a position to be able to enter into commercial agreements with foreign nations? May the judiciary or the executive interfere with the legislative prerogative, sit in judgment on the wisdom of the act or the methods employed to accomplish great commercial results? The policy embraced in this is a unit, and its parts can not be separated. May the judiciary invade the domain of the legislative branch of the Government and say that a part of the method which Congress has adopted to regulate commerce, by obtaining reciprocal commercial advantages in a certain manner, is unconstitutional because a part of the law to carry out its policy appropriates seven, nine, or ten millions of money to our own people in lieu of the former burdens they had carried of fifty millions of taxes annually levied on sugar? May the courts indirectly enter upon the legislative domain and attack legislative discretion and break down its policy and its lawful exercise of power? If courts can not do this, surely the executive can not.

Courts are chary, as Justice Miller has well said, of interfering with legislative enactment unless there is a clear violation.

It will not do, therefore, to say that the object of this payment of money to producers of domestic sugar is to enrich them and that such was the only object of the sugar schedule in the tariff law of 1890. That would be a very narrow view to take of the subjects embraced in the law, worthy only of the hustings. Let me repeat:

We were sending a very large amount of gold or its equivalent abroad for foreign sugar, annually over $100,000,000, and it was hoped that under the new and stimulating policy this country would gradually become able to produce its own sugar from cane, beets, and sorghum. Under a similar policy Germany, France, Austria, and Russia had come to be exporters of sugar. Why not this country? We have the soil and the climate.

Tea and coffee had become "free"—why not sugar? Hence raw sugar was placed on the free list, and instead of the protection which Louisiana had had by a 2-cent tax or duty, the bounty policy was substituted as the encouragement for sugar production, especially in view of what the (new) beet-sugar industry promised.

It gave the people cheaper sugar—sugar at 5 cents per pound which had been costing them 7 to 8 cents. The saving in this regard was equal to $50,000,000 per annum for three years.

Attached to the bounty policy and as an integral part of it was the reciprocity clause in the act of 1890, under which it was proposed to give our farmers foreign commercial advantages. This clause was as much a part and parcel of the sugar policy—although the clauses were separated in the act—as any other of the paragraphs of the sugar schedule. If one fell, the other necessarily went with it. The importance of this feature of law was either not understood or not appreciated. Because the reciprocity provision was a part of the sugar schedule—for it could not be utilized but for "free" sugar—it is proposed to briefly refer to the conditions that existed to show its importance, proving that payment of a bounty to our sugar producers was not all that Congress had in view in enacting the sugar schedule of 1890. May 6, 1883, Germany issued a "sanitary" decree prohibiting the entry of our pork, hogs, and sausage. For eight years, in spite of our best diplomatic efforts, our pork and other meats were by this measure excluded by Germany and given by this decree a bad name among other nations. October, 1890, Congress passed a tariff law, section 3 of which armed the President with power to exclude German beet sugar if that country did not allow our producers fair and equal privileges.

August 30, 1890, Congress passed another act, section 5 of which gave the President additional power; retaliatory power.

March 3, 1891, Congress passed the meat-inspection act.

Now, mark what followed, the evidence of which is found in Senate Ex. Doc. 119, Fifty-second Congress, first session.

August 22, 1891, the German ambassador wrote Mr. Foster, our special minister, saying that because of our meat-inspection act and regulations thereunder there was no longer need of her prohibitory decree, and that as soon as Germany was officially advised that our inspection law had taken effect, the prohibition on our meat would be removed. And he further said that when Germany had removed her decree against our meat, he assumed the President would not exercise the powers given him under section 3 of the tariff act of 1890, nor those conferred on him by section 5 of the act of August 30, 1890. (See Public Acts 247 and 330 of the Fifty-first Congress, first session.)

The German ambassador also said that he based this assumption on the ground that Germany was prepared to grant the same tariff reduction to the United States on agricultural products as had then already been granted by Germany to Austria.

Here, then, were two propositions:

First. A promised withdrawal of the decree against our meat, because of our inspection law; and

Second. If we would not enforce section 3 of the tariff law of 1890 and section 5 of the act of August 30, 1890, Germany would let in our agricultural products on the same terms that Austria's had been let into Germany.

This letter was answered promptly by Mr. Foster August 22, 1891. He stated that in view of Germany's promise to annul her meat edict against the United States in consequence of our inspection act, and in view of the statement that Germany would grant us tariff reductions if the President would not enforce section 3 of the tariff law of 1890, and section 5 of the act of August 30, 1890, he (Foster) would say that *our meat inspection* law would take effect September 1, 1891,

and the President (because of promised tariff reductions by Germany) would not exercise his power under section 5 of the act of August 30, 1890. And then, as to section 3 of the tariff law of 1890, Mr. Foster said that as soon as the United States was advised of Germany's tariff reductions on the indicated articles, the articles mentioned in section 3 of the tariff law of 1890 would be ordered to be continued "free."

December 10, 1891, the German minister transmitted the table of tariff concessions granted by Germany to Austria, which showed the reductions made to Austria, and those articles also on which no higher duties were to be levied by Germany during the treaty, to go into effect February 1, 1892.

We will not now stop to inquire nor to argue who got the best of this bargain. We know that our export trade to Germany ran up as follows:

Total exports from United States—	
1889	$68,000,000
1890	85,500,000
1891	92,200,000
1892	105,500,000

The point not to be overlooked in all this is that this correspondence shows that Germany withdrew her prohibition or "sanitary" decree of 1883 against our meats on the ground that we had provided by law and regulation against all fear of diseased or unwholesome meats, and because (evidently) of the fear that we would call into action section 5 of the act of August 30, 1890, and also section 3 of the tariff act of 1890.

To prevent the latter she would and did agree to reduce her tariff on articles coming from the United States.

The two propositions, while seemingly connected, stood really on separate and distinct grounds. Our inspection law and regulations overthrew her prohibitory decree of March 3, 1883; and

Second. The fear that we would exercise our power under section 5 of the act of August 30, 1890, and section 3 of the tariff act of 1890 induced Germany to give us the same tariff concessions given to Austria.

In the "memorandum" of July 16, 1894, from the Imperial German embassy, Senate Ex. Doc. 58, third session Fifty-third Congress, it is stated that it is generally believed in Germany "that the United States, in the (reciprocity) agreement of August 22, 1891, guaranteed exemption to Germany from the duty on sugar, in return for the concession of the conventional duties on American agricultural products, and the removal of the restrictions on the importation of swine" by the United States into Germany. (See Mem.)

The courts even have no right to invade the domain of legislative power and discretion and break down a commercial policy such as was embraced in the law of 1890, much less the Executive.

In pursuance of a reciprocal agreement, we have given Hawaii, indirectly, a bounty by remission of duty on sugar equal to $50,000,000. It has been done under the power in Congress "to regulate commerce."

If the question supposedly involved here had not been thrust forward as an issue between political parties, no sort of doubt would be entertained as to the power of Congress to order money paid for any purpose it thought proper. The whole policy was one indivisible *unit*, and its parts could not be separated.

The Congress of 1894, which ordered this money paid, understood *the* whole question. It was a body presumably opposed to the policy

of the original enactment. It contained some of the ablest lawyers in the country. In the light of all these things, it solemnly indicated its pleasure. There is no legal evidence to indicate what considerations of a public character provoked it to enact the legislation of 1894 as a compromise of the matter. It was a solemn legislative adjudication of the question, and, like the celebrated "compromise" tariff act of 1833, all men should respect it, nor overzealously seek to overthrow it by indirection.

Prior to the repeal of the act of 1890 the administrative officers of the Government, with the aid of the Attorney-General, had the power to refuse to issue licenses or in some other way to test the question supposed to be at issue. Larger sums than those involved were paid out without question.

"A proper respect for a coordinate branch of the Government requires the courts (even) to give effect to the presumption that Congress will pass no act not within its constitutional power." Lack of authority must be clearly demonstrated. (106 U. S. Rep., p. 635; Sedg. on Stat. and Const. Law, 592.) To hold an act of Congress unconstitutional such a construction must be unavoidable. (3 Peters, p. 448.)

Can it be fairly said that this act is clearly unconstitutional; that there is no doubt about it; that such a conclusion is unavoidable?

The Comptroller should be guided by the same rules that the courts are, and no personal theory of economics should guide his determination. In 12 Wheaton, 213, it is said:

> If I could rest my opinion in favor of the constitutionality of a law * * * on no other ground than the doubt so felt and acknowledged, that alone, in my estimation, would be a satisfactory vindication of it. It is but a decent respect due to the * * * legislative branch by which any law is passed to presume in favor of its validity until its violation of the Constitution is proved beyond all reasonable doubt. This has always been the language of this court.

In 99 U. S. Rep., 700, the court said:

> Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the Government can not encroach on the domain of another without danger.
>
> To be in no doubt is to be resolved, and the resolution must support the law. (Thayer's Cases on Const. Law, Vol. 1, p. 174.)

To sum up the matter and see what the result of the contention here might be.

Congress passes an act, to which the President in office is a party. It is a law until set aside by the proper tribunal. Any other theory would mean chaos, anarchy, and civil strife. Not every man may assume to say, "That law is unconstitutional, and hence there is no law." Seventy millions of people would thereby clothe themselves, each for himself, with judicial power. This theory is usurpation. It defies the Constitution, which lodges power in a tribunal to discover not only what the law is, but whether a statute violates the fundamental law. It is probably true that, in an extreme case, the President, the executive head of the nation, sworn to obey the Constitution and enforce the laws, may assume in the first instance to act or neglect to act as if a statute was unconstitutional. He may even defy a judicial interpretation, being responsible only by way of impeachment, or to the people at the ballot box, but this rule does not apply to his subordinates, who are only answerable by removal from office, indictable, or answerable in damages. But Congress has power over them, and *over their offices.* It may abolish the office or clothe some

other subordinate with the power intrusted to the refractory or anarchistic offender. But for such an officer to say, "There is no law," because in his judgment it is "unconstitutional," would place the officer in this case not only in the attitude of defying a Congressional mandate, but in the position of questioning a statute which the very power which appointed him has decided to be constitutional. The error which some labor under is in assuming that this is a case in which the Comptroller is guarding the Treasury against a private claimant. On the contrary, the very moment the issue of "constitutionality" is raised it becomes an issue between the legislative and executive branches on the one side and the Comptroller on the other.

Judge Ranney, in 1 Ohio State Rep., p. 83, puts the law this way:

> The legislature is of necessity, in the first instance, to be the judge of its own constitutional powers. Its members act under an oath to support the Constitution, and in every way under responsibilities as great as judicial officers. Their manifest duty is never to exercise a power of doubtful constitutionality. Doubt in their case, as in that of the courts, should be conclusive against all affirmative action. This being their duty, we are bound in all cases to presume they have regarded it; and that they are clearly convinced of their power to pass a law before they put it on the statute book. If a court in such a case were to annul the law while entertaining doubts upon the subject it would present the absurdity of one department of the Government overturning in doubt what another had established in settled conviction. (Citing 3 Dallas, 171; 4 Dallas, 14; 8 Cranch, 87.)

If it be doubtful whether the legislative power has exceeded its limits, the judiciary (even) can not interfere, though it may not be satisfied that the act is constitutional. (2 Monroe, Ky., 178.)

It is sufficient to establish the existence of a law to find it on the records of the State. (3 R. I. Rep., p. 121.)

A statute is presumed to be constitutional. (65 Ala., p. 197.)

The mind must clearly be convinced to the contrary. (65 Ala., p. 197.)

The burden of proof is on him who asserts its unconstitutionality. (34 Ala., p. 321.)

As to the measure of proof necessary to set aside a statute, the cases are not agreed. It some cases it is said that the expressed will of the legislature ought not to be disregarded, unless the unconstitutionality be clearly demonstrated. (6 Cranch, 87; 3 Denio. 381: 3 Selden, Ky., p. 109; 26 Wend., p. 606.)

In another case it is said that we should not hold that the legislature had exceeded its powers except in cases admitting of no reasonable doubt. (Cases supra.).

At all events, that an act is "unconstitutional" must be clear. In Morris *v.* The People, 3 Denio, supra, Senator Lott, of the court of errors, in New York, said:

> An act of the legislature can not be set aside as unconstitutional unless its incompatibility with the Constitution is manifest and unequivocal.

And yet, in spite of this uniformity of testimony, we stand here as though the burden of proof was upon these claimants to show to a subaltern executive officer that an act of Congress that he has sworn to enforce is not a nullity.

The position would be comical if it were not so serious.

I feel that I am not inexcusable for having occupied, as I have, the entire day. Had there been afforded me more chance for preparation I could have made my argument much more concise and, I think, more *forcible.* I have presented to your honor the considerations that *move me* to my belief. I can not deem it possible that all precedents

are to be thrown to the winds and that a new, startling, and, as I believe, most dangerous precedent is to be established by yourself. I shall not repeat what I have said with reference to what I apprehend to be the grave dangers besetting any such new departure. I believe them to be most serious—serious not only because of the interests directly involved in this controversy, but as threatening a usurpation of power never contemplated by the framers of the Government of the United States. I have every confidence and not the least distrust that when your honor shall come to consider the great, the most important question here, the question of your power, you will see that its enlargement is more than a matter of personal inconvenience; it is more than the mere adding to you of the cares and responsibilities of place. It is starting upon a new road that leads to dangers which no man can describe, that I believe would lead to disaster that would be national in its character and destructive of the very best interests of the Government of the United States. I leave further argument to my associates, thanking them for the courtesy that they have afforded me in thus opening the case and thanking you for the courtesy and kind attention you have shown.

The COMPTROLLER. If I understand your proposition correctly in regard to the jurisdiction of the question, it is this: That when Congress has passed an act and that act has been submitted to the President for Executive approval and has been approved by him, the executive branch of the Government is estopped to deny thereafter the constitutionality of the act until the Supreme Court of the United States has declared it unconstitutional?

Mr. MANDERSON. That is my position.

The COMPTROLLER. Is that a correct statement of your contention?

Mr. MANDERSON. It is a concise statement of my position.

The COMPTROLLER. Supposing the act passed by the legislative branch did not meet with Executive approval, but did meet with a veto, and the legislature passed the act over the veto of the President, what then?

Mr. MANDERSON. In my opinion that would not change the condition in the least.

The COMPTROLLER. There is no difference between an act passed over the veto of the President and one passed with his approval?

Mr. MANDERSON. No. What I said was that the approval by the President would, or should, in equity and good conscience, be an estoppel upon the executive department, and neither the President who signed the act nor his executive subalterns should nullify it. I think that when a law is a law, having been passed in the forms of the Constitution, whether it be by Executive approval or by the passing of the law over the veto, and is upon the statute books, it does not lie in the mouth of an executive officer to disobey it. But he is to execute it; he is to construe it; he is to expound it; he is to settle rights under it. He is not to tear it to tatters because he thinks it is unconstitutional; that that high province is not his, but belongs to the judiciary. And when it is a Federal official of high rank, like yourself, no dictum of an inferior court, divided upon the question, should control him, but he should demand that the Supreme Court of the United States be his warrant for refusing to a citizen his rights under the law.

The COMPTROLLER. Let me ask you with respect to an appropriation in fact unconstitutional and which has been passed by the Legislature over the veto of the Executive, How can the question be decided

in the courts so as to prevent the expenditure of the public money in a manner contrary to the Constitution?

Mr. MANDERSON. There are ways of testing it.

The COMPTROLLER. What are they?

Mr. MANDERSON. I do not intend to arm any adversary of my constituents with the method.

The COMPTROLLER. You are quite wise there.

Mr. MANDERSON. When I am retained on the other side—and I never yet have been on two sides of the same suit—I will give that information.

The COMPTROLLER. I have been unable to find out how it is to be done.

Mr. MANDERSON. I think I know how it could be done. I think I could do it if necessity compelled. But I am not bound to give to my adversary—and I do not mean you by that——

The COMPTROLLER. I understand.

Mr. MANDERSON. I am not bound to give my adversary, who may be in the corridor within the sound of my voice, the information that would lead him to bring a lawsuit against my constituents. I might by that get a retainer from my constituents, but I am not here for that.

The COMPTROLLER. Your argument goes to the full extent that if, for instance, an act should be passed in the short session of Congress, after a Presidential election at which the party that was in power, both in the legislative and executive branches, had been put out of power by the will of the people, it could not be annulled by the Executive, although unconstitutional, until it had either been repealed by a subsequent Congress or in some form or other had reached the determination of the judicial department of the Government.

Mr. MANDERSON. Exactly that. I say no election in November in a Presidential year repeals any statute.

The COMPTROLLER. Of course not.

Mr. MANDERSON. It nullifies no law.

The COMPTROLLER. I agree with that, also.

Mr. MANDERSON. It may entirely change the political aspect of affairs. It may put down the party of protection and put up the party of free trade, but it repeals no protection laws; it nullifies none.

The COMPTROLLER. Of course it does not repeal the law.

Mr. MANDERSON. The fact that the new executive officials are not in accord with the law makes no difference. The Supreme Court or the ensuing Congress are the only authorities that can wipe a law from the statute books.

The COMPTROLLER. It is not a question of repealing the law; it is a question as to whether there is a law.

Mr. MANDERSON. So far as the Executive is concerned, it is a law when it is passed by Congress. It is for the Supreme Court to say whether it is or is not a law under the Constitution. Until that great tribunal destroys it, it is binding upon every executive officer.

ADDITIONAL ARGUMENT PRESENTED ON THE PROPOSITION THAT THE COMPTROLLER OF THE TREASURY IS WITHOUT POWER TO PASS UPON THE BOUNTY CLAIMS FOR SUGAR PRODUCED UNDER THE ACT OF MARCH 2, 1895.

At the conclusion of the argument of Judge Semmes Mr. Manderson suggested to the Comptroller that under the terms of the act of March 2, 1895, the Comptroller had no power to act upon this account and that the only auditing, accounting, and disbursing officers who can have any legal connection with the claims for bounty for sugar produced between July 1 1894, and August 28, 1894, and for the balance of the fiscal year 1894 are the Secretary of the Treasury and the Commissioner of Internal Revenue.

I suggested this view of the matter in the opening argument, and expected and hoped that my associates would elaborate it. The more study and thought I give the proposition the more am I convinced that the view stated above is the correct one, and on behalf of the Oxnard Beet Sugar Company I will enter a motion with the Comptroller that he refer the account in hands to the Secretary of the Treasury, so that the head of the Treasury Department may, in connection with the Commissioner of Internal Revenue, perform the duties that so clearly devolve upon them under existing law.

The legislative, executive, and judicial appropriation bill in which is contained the legislation known as the Dockery Act, which practically creates the offices of the Auditor for the Treasury Department and the Comptroller of the Treasury and prescribes their duties and grants their powers, was approved and became a law on July 31, 1894. It is the last act upon that subject-matter, and in it and the laws passed prior thereto can be found all the provisions of law relating either to their duties or powers. In my oral argument herewith printed and submitted I went into the consideration of this law in great detail and need not repeat it here.

The law providing for the adjustment of the accounts or claims for bounty for sugar produced during the two periods named in the fiscal year ended July 1, 1895, and providing for the payment of the bounty was approved and became a law on March 2, 1895.

It is the later law, and is complete within itself, covering every question incident to the preparation for accounting, the ascertainment of the amount due each claimant, the passing upon or approval of the claim, and the disbursing or payment of the money to the bounty claimants. If this be so, and if neither the Auditor of the Treasury Department nor the Comptroller of the Treasury has duties assigned to him under this later and specific law, then this account is wrongfully in the hands of the Comptroller, and should be at once transmitted by him to the Secretary of the Treasury or the Commissioner of Internal Revenue. It is surely so, and as the act in express terms throws all power, all duty, and all responsibility upon the Commissioner of Internal Revenue, who is clearly the natural officer to assume them, and grants to the Comptroller no power, requires from him no duty, and imposes upon him no responsibility, he is without jurisdiction in this case and any act performed by him is purely ornamental, entirely gratuitous, and utterly void.

The act of October 1, 1890, known as the McKinley law (Stat. L., vol. 26, p. 533), *so far as the* sugar bounty is concerned, is nearly akin

to and much like the law of March 2, 1895. Let us consider the first-named law.

The whole scheme of the original sugar-bounty schedule of 1890 clearly indicates on its face that the determination of the amounts due for sugar produced was to be left to the Commissioner of Internal Revenue, upon the same theory that amounts due from distilleries go through that Bureau. For instance, to be entitled to the bounty certain things were required of producers:

1. The sugar producers must have filed, prior to July 1, "notice of the place of production."
2. "A general description of the machinery and methods to be employed" in production.
3. An "estimate of the amount of sugar" that the producer would probably make.
4. An application for a license and a bond, etc.

All these things were to go to the Commissioner of Internal Revenue, who was the only person who could know whether these things had been done. All other persons would necessarily act (if they had any duty to perform) perfunctorily. Then the license emanated from the Commissioner of Internal Revenue. The rules and regulations came from him, approved by the Secretary. Of none of these things could the Comptroller or the Auditor know, except as an ordinary citizen might conclude on seeing the papers signed by the Commissioner of Internal Revenue.

The "supervision" and "inspection" of the sugar produced was a duty imposed on the Commissioner of Internal Revenue. (See par. 232–234, act of 1890, and Stat. L., vol. 26, p. 925, regarding sugar inspectors.).

Who was it that was to ascertain the material (if not all the) facts which entitled the producers to the bounty, if it was not the Commissioner of Internal Revenue? Upon whom, aside from the Secretary himself, was any duty imposed? What officer could ascertain—

1. The amount of sugar made.
2. Whether made under the rules and regulations.
3. The degree of saccharine strength on which the bounty depended.
4. Whether the four essential statements under paragraph 232 had been filed and a license issued under 233.

In the very nature of things, this whole duty having been cast on the Commissioner of Internal Revenue; he, and he alone, was the only person who could pass upon the questions involved.

This is in perfect accord with paragraph 235, which read as follows:

> And for the payment of these bounties the Secretary of the Treasury is authorized to draw warrants on the Treasurer of the United States for such sums as shall be necessary, which sums shall be certified to him by the Commissioner of Internal Revenue, by whom the bounties shall be disbursed. * * *

From this it very clearly appears that here was a special act, the operation and provisions of which made it clearly unnecessary for any person except the persons mentioned in the law, to have any power or control over the matter, since no one, except the Commissioner of Internal Revenue, under the theory and framework of the law, could possibly know the facts. There is not a word said about any Auditor nor Comptroller!

In fact, they are excluded by the words in paragraph 235, which *authorize* the Secretary to draw warrants for such sums as shall be *certified to him* by the Commissioner of Internal Revenue. Where in *that statute* is there any power for any Auditor or Comptroller to inter-

fere? It would be an usurpation of the power of the only person on whom was cast the duty of certifying the amounts.

It is no answer whatever to say that the Commissioner of Internal Revenue did not or may not have asserted his power or authority. It does not preclude either him or claimants from insisting on the law because of some unwarranted precedents set in the settlement of the bounty claims in the past. The fact that the bounties due under the McKinley law were paid was sufficient for the purpose of the claimants and they would not be likely to complain of the manner that the conclusion was reached.

So much for the act of 1890. Turning to the act of March 3, 1895, we find that Congress left this matter still more emphatically with the Commissioner of Internal Revenue. (28 Stat. L., pp. 933–934.)

> The bounty herein authorized to be paid shall be paid upon the presentation of such proof of manufacture and production as shall be required in each case by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and under such rules and regulations as shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. And for the payment of such bounty the Secretary of the Treasury is authorized to draw warrants on the Treasurer of the United States for sums as shall be necessary, which sums shall be certified to him by the Commissioner of Internal Revenue, by whom the bounty shall be disbursed. * * *

This is the exact language used in the act of 1890, except that the word "such" seems to have been omitted in the act of 1895, and the word "bounty" in the act of 1895 is plural in the act of 1890.

The whole matter was left by act of 1890 to the Commissioner of Internal Revenue, and this theory was followed in the act of 1895, which contains this provision: "For examinations of claims and ascertaining the amount due, and the prevention of fraudulent claims for said bounty, the Commissioner of Internal Revenue is hereby authorized to employ two internal-revenue agents in addition to those already provided for," etc.

This clearly makes the Commissioner of Internal Revenue the final adjuster. He, and he only, ascertains the amounts and prevents fraudulent claims. In the very nature of things this must be so under this special act.

Power to "ascertain the amount due" in these claims, peculiar in their nature, falling entirely within the control of the Internal Revenue Bureau, excludes the interposition of any other officer and makes the Commissioner of Internal Revenue the adjuster, whose finding is evidently final and conclusive on the Government, as that of the Auditor and Comptroller is in some other cases.

It may or may not be that the Comptroller eventually "countersigns" the warrants after the Secretary of the Treasury has signed them, but that would be a mere perfunctory act to indicate genuineness of signature, etc. It would give the Comptroller no power whatever over the Secretary's warrants. The counter signature of warrants is an act so purely perfunctory that under the terms of the Dockery Act the Assistant Comptroller and even the chief clerk has the power to countersign warrants. Could anything show more clearly the mere ministerial character of that duty?

It may well be that the Commissioner of Internal Revenue may certify a total in bulk and so draw by way of requisition. In any event it is quite evident that it was the intent of Congress to give the whole finding and certifying power to the Commissioner of Internal Revenue, and that it *is clearly* expressed. The Comptroller can take no

power by implication, and certainly can have no desire to take upon himself duties clearly devolving upon others.

It is no answer to say that the act of July 31, 1894, provides that the "Auditor for the Treasury Department shall examine all accounts relating to the * * * internal revenue * * * and to all other business within the jurisdiction of the Department of the Treasury." This would be authorization to him perhaps to examine the accounts of the Commissioner of Internal Revenue in the matter of his receipts and expenditures, and might apply to these bounty accounts if it were not for the fact that the later law of March 2, 1895, which must control, so carefully provides for all the detail of accounting and payment.

MEMORANDUM.

In a letter from Secretary of State Gresham to the President of the United States, dated October 12, 1894, in regard to the protest of the German ambassador against the imposition by the Wilson tariff bill of an additional one-tenth of a cent a pound duty on sugars imported from countries that paid a greater bounty on the exportation of refined sugar than was paid on raw sugar, Secretary Gresham said:

> The payment by a country of a bounty on the exportation of an article of its produce or manufacture for the purpose of encouraging a domestic industry can no more be considered as a discrimination than can the imposition of a protective or practically prohibitive duty on the importation of an article the produce or manufacture of a foreign country for the same purpose be so considered. The two measures are the same in principle; the question as to which shall be adopted is a matter of domestic policy. It is a matter in respect to which nations, in stipulating for equality of treatment, have preserved liberty of action. The protective duty on importation and the bounty on exportation are alike intended, whatever may be their effect, to create a material advantage in production or in manufacture. As between the two the bounty is more favorable to inhabitants of foreign countries, since it tends to enable them to get cheaper articles at the expense of the bounty-paying government.

Secretary Gresham then refers to the bounty on exported pickled fish, to which reference has been made in this argument:

> Formerly the Government of the United States paid a bounty on all exported pickled fish that were derived from the fisheries of the United States. (Sec. 2, act of July 29, 1813, Stat. L., vol. 3, p. 50.) This act was continued in force in 1816, its duration having originally been limited to the period, whatever it might be, covered by the war with Great Britain and a year thereafter. (Act of February 9, 1816, Stat. L., vol 3, p. 254.) It remained in force for many years; it seems still to have been in force in 1845.

Consumption of sugar in United States.

1890	tons	1,522,000
1891	do	1,872,000
1892	do	1,853,000
1893	do	1,891,911
Or, in 1893	pounds	4,296,000,000
Of which we imported	do	3,651,000,000
And produced	do	645,000,000

Production of cane sugar in United States.

1888–89	pounds	287,000,000
1890–91	do	483,000,000
1892–93	do	600,000,000

THE SUGAR CROP OF THE WORLD.

It is interesting to note the sugar crop of the world and see how the production of beet sugar exceeds that from cane.

The cane crop of 1893–94 is made up as follows:

	Tons.	
Cuba	900,000	
Puerto Rico	60,000	
Trinidad	50,000	
Barbadoes	65,000	
Martinique	32,000	
Guadeloupe	50,000	
Demerara	110,000	
Brazil	225,000	
Java	480,000	
Philippine Islands	250,000	
Mauritius	125,000	
Réunion	37,000	
Jamaica	26,000	
Minor Antilles	25,000	
Louisiana	265,000	
Peru	65,000	
Egypt	70,000	
Sandwich Islands	135,000	
		2,960,000

The beet crop was made up as follows:

Germany	1,300,000	
Austria	825,000	
France	575,000	
Russia	650,000	
Belgium	225,000	
Holland	75,000	
Other countries	120,000	
		3,770,000
Total of cane and beet		6,730,000

For the last five years it has been:

Sugar crop of the world.

Years.	Beet sugar.	Cane sugar.	Total.
	Metric tons.	*Metric tons.*	*Metric tons.*
1893-94	3,841,000	2,960,000	6,801,000
1892-93	3,428,515	2,645,963	6,074,478
1891-92	3,501,920	2,852,296	6,354,216
1890-91	3,710,895	2,554,536	6,265,431
1889-90	3,633,630	2,069,464	5,703,094

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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 194.

HEARINGS

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

IN REGARD TO THE BILLS

S. 1316, "TO FACILITATE THE CONSTRUCTION AND MAINTENANCE OF TELEGRAPHIC CABLES IN THE PACIFIC OCEAN FOR THE USE OF THE GOVERNMENT IN ITS FOREIGN INTERCOURSE,"

Represented by Messrs. Z. S. SPALDING and WAGER SWAYNE,

AND

S. 876, "TO PROVIDE FOR TELEGRAPHIC COMMUNICATION BETWEEN THE UNITED STATES OF AMERICA, THE HAWAIIAN ISLANDS, AND JAPAN, AND TO PROMOTE COMMERCE,"

Represented by Messrs. JAMES A. SCRYMSER and EDMUND L. BAYLIES.

APRIL 1, 1896.—Ordered to be printed.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1896.

IN THE SENATE OF THE UNITED STATES.

Mr. SHERMAN presented the following

HEARINGS BEFORE THE COMMITTEE ON FOREIGN RELATIONS ON PACIFIC CABLES:

COMMITTEE ON FOREIGN RELATIONS,
United States Senate, February 26, 1896.

The committee met at 10.30 a. m. Present, Messrs. Sherman (chairman), Frye, Davis, Cullom, Lodge, Morgan, Gray, Turpie, and Daniel.

The CHAIRMAN. Both parties in this controversy between the two cable companies being now present I suggest that, as our time before the meeting of the Senate is limited, each party be allowed twenty minutes to make their statements in their own way.

Senator FRYE. I suggest that the party who speaks first reserve five minutes to reply to anything that may be said by the other side.

Mr. SPALDING. I have, for the sake of accuracy, put upon paper what I design to say. It rests with the committee whether I shall read it.

The CHAIRMAN. You had better read it.

Mr. SPALDING. I can not read it in fifteen minutes.

Senator DAVIS. You had better file the paper and make your own argument.

Mr. SPALDING. I will file the paper.

The paper is as follows:

In response to invitation to give your committee any facts within my knowledge relating to the matter of establishing communication by electric telegraph cable between San Francisco and Honolulu, I beg to present the following crude statement:

"A bill to facilitate the construction of telegraph cables in the Pacific Ocean for the use of the Government in its foreign intercourse" was introduced in the United States Senate by Senator Hale, and on the 16th day of January was referred to your honorable committee.

"A bill to provide for telegraphic communication between the United States of America, the Hawaiian Islands and Japan, and to promote commerce," was also introduced in the Senate by Senator Carter, and was likewise referred.

The bill introduced by Senator Carter has been proposed to the committee to be amended by certain changes and additions. It is, as I take it, upon these changes and additions that the committee desire to have whatever information I may be able to furnish.

According to the proposed amendments the bill would require the United States to guarantee a right to land, maintain, and operate "telegraph or magnetic lines or cables in and over the waters, reefs, islands, shores, and land over which the United States now has, or may hereafter acquire, jurisdiction by treaty or otherwise."

This guaranty is made more specific and the responsibility required of the United States is more definitely set forth by the naming of "Pearl

River Harbor or other landing on the Island of Oahu" and "such other islands in the Pacific Ocean as said company shall select" as points where the said right or guaranty shall be granted and maintained.

Knowing that the Hawaiian Government had, on the 12th day of August, 1895, granted to me "the sole and exclusive privilege and franchise for and during the full term of twenty years from the 1st day of November, A. D. 1895, to construct or land upon the shores of the Hawaiian group a submarine electric telegraph cable or cables to or from any point or points on the North American continent or any island contiguous thereto," the parties interested in the bill had endeavored to evade such "exclusive franchise" by the plea that the same was not binding because the United States had, by treaty, "the exclusive right to enter the harbor of Pearl River, in the Island of Oahu, and to establish and maintain there a coaling and repair station for the use of the vessels of the United States, and to that end the United States may improve the entrance to said harbor and do all other things needful to the purpose aforesaid."

Admiral John Irwin, retired, on behalf of the company named in the bill, makes the following argument in a letter to the chairman of the Committee on Interstate and Foreign Commerce, in the House of Representatives, under date January 26, 1896:

> Under the treaty of November 9, 1887, the United States Government has unquestionably sovereign rights at Pearl Harbor. I tested that question in March, 1894. Being then in command of the United States forces on the Pacific Station, and flying my flag on board of the *Philadelphia* in the harbor of Honolulu, I did, with the hearty consent and approval of the Hawaiian Government, proceed to Pearl Harbor, make a survey of its waters and bar, selected sites for a navy-yard, dry dock, and fortifications for defense.

Thus was the "sovereignty" of the United States made known (in the opinion of the retired admiral) without even the hoisting of the flag. To what distance or reach the "sovereignty" extends, and whether it includes the private lands adjoining the waters of Pearl River Harbor for the usual nautical "three-mile limit" or not, the Admiral does not say. Nor has any other claim, more definite, been made to establish the right of the United States to delegate authority over the lands, either in the vicinity of Pearl River Harbor or other landing, on the Island of Oahu.

While it is not the purpose of this argument to discuss all the details of the bill introduced by Mr. Carter in the Senate and Mr. McCormick in the House of Representatives, it is particularly desired to call attention to this important point:

If the Congress of the United States decides that "the sole and exclusive privilege and franchise" granted by the Hawaiian Government is of no effect, and that the United States has the right and power to grant a privilege for landing a cable or cables upon the lands surrounding Pearl River Harbor, "or other landing on the Island of Oahu in the Hawaiian group of islands," then it has the means for determining in what way such right shall be given. But it seems important that the question, involving as it does points of national comity, should not be decided upon the bare opinions of interested parties.

As long ago as 1877 an "exclusive right" or concession was granted to a British subject by the Hawaiian Government to land a cable or cables "from the British North American possessions." This concession was not made use of, and lapsed in due time, because the parties intending to furnish the capital desired to have the "exclusive right" extended so as to include the entire western coast, which the Hawaiian Government refused to do.

Other grants and concessions were made at various times by the Hawaiian Government, including one to Cyrus W. Field, and in 1890

the Hawaiian Legislature passed "An act to authorize the Hawaiian Government to contract for the construction and maintenance of submarine electric telegraph cables," under which (in January, 1891) a contract was made with Mr. Alfred S. Hartwell, granting to him "the sole and exclusive privilege" to construct or land upon the shores of the Hawaiian group a submarine electric telegraph cable to or from any point on the North American Continent.

No public or private protest has ever been made, so far as I know, to the action of the Hawaiian Government in thus granting "exclusive rights" to land cables upon her shores, and in conformity with the provisions of the contract made by Mr. Hartwell, a bill for the incorporation of the "Pacific Cable Company," and granting a yearly subsidy of $150,000, was favorably reported by the Committee on Foreign Relations in the House of Representatives. In the Fifty-second Congress, as the Record will show, a provision was incorporated by the Senate on the diplomatic and consular appropriation bill for a subsidy of $250,000 a year to enable a private company to construct, lay, and maintain a submarine cable from this country to Honolulu. But the proposition was opposed and defeated in the House of Representatives on the ground that as the Hawaiian Government had given no official recognition to the scheme it would be better for our Government to do the work and pay the bills and own the line than to connect itself by subsidy with a private company having no recognition by the Hawaiian Government.

It would seem that this action of Congress has stamped the seal of approval upon the right of Hawaii to thus permit or refuse, as she sees fit, the use of her shores for the benefit of foreign nations or individuals.

Whether the "exclusive right" so granted and extended in the agreement or concession referred to is useful and beneficial, or may be made useful and beneficial to the United States, is a question that I think will meet with but one reply.

The United States hold at the present time a most potent power over the destinies of the Hawaiian Islands by virtue of the treaty of reciprocity, which was amended on the 20th of January, 1887, by the advice and consent of the Senate, two-thirds of the members present concurring, as follows:

After article 1 insert the following as article 2:

"His Majesty the King of the Hawaiian Islands grants to the Government of the United States the exclusive right to enter the harbor of Pearl River, in the island of Oahu, and to establish and maintain there a coaling and repair station for the use of vessels of the United States, and to that end the United States may improve the entrance to said harbor and do all other things needful to the purpose aforesaid."

Change the number of article 2 in the original so that it will read article 3.

The value of this amendment, or of the treaty with the amendment, has been considered sufficient to warrant the insertion of specific provisions in the tariff laws to keep the treaty alive, and yet the financial results of such treaty can not be said to have greatly benefited the United States. But we find the advantage of the treaty in the "exclusive right" to enter the harbor of Pearl River, and there establish a coaling and repair station for the use of vessels of the United States. It is hardly necessary to say that such right would not have been considered particularly valuable but for its "exclusiveness." And it is but a continuation of the policy indicated in the original treaty, which provides that the Hawaiian Government shall not make any treaty by which any other nation shall obtain the same privileges as the United States.

All action by Congress and the messages of different Presidents have been on the line that "this treaty should not be impaired," and in 1891 the Committee on Ways and Means, through Mr. McKinley, recommended the passage of a bill to that end, with a statement to the effect that "there are special reasons for the maintenance of the treaty at this time."

That the same value attached to the "exclusive" rights of the United States in the establishment of telegraphic cable lines to the Hawaiian Islands from this continent, seems equally clear. If a naval and coaling station is to be established at Pearl River Harbor, it would seem absolutely necessary that communication by cable should attend it, and in the same degree would the value of such communication be enhanced by its "exclusiveness" when desired. Therefore, a well-defined and properly restricted "exclusive franchise" in the hands or subject to the control of the Government of the United States, is not to be rejected because of the cry of "monopoly" raised by interested parties.

While there should be no imputation of unworthy motive, it is well to ask what reasons are to be found for the particular application now being made to Congress, asking that such "exclusive rights" shall be refused, and the proffer of the Hawaiian Government rejected, thereby destroying the value of those islands as an outpost of the United States, and making them a common entrepôt for other nations who are striving for the political and commercial supremacy of the Pacific. The application comes from a company whose president is also the president of the Central and South American Telegraph Company, having lines running from Vera Cruz to Goatza-Coalcos, in Mexico, and from Salina Cruz, Mexico, to Chorillos, Peru, with overland lines and connections to Europe via Pernambuco as well as New York.

In 1891 a bill was before Congress asking for recognition and assistance in laying a cable between San Francisco and Honolulu, in accordance with a concession granted by the Hawaiian Government to Mr. Alfred S. Hartwell, who stated in a letter to the subcommittee of House Committee on Foreign Affairs, that he had figures as to the cost of such cables, etc., from "General Scrymser, president of the Central and South American Telegraph Company," who estimated the expense of such line at over $3,500,000, without counting cable repair steamers. He said that—

> General Scrymser had further informed him that the operating expenses of two stations, San Francisco and Honolulu, could not be less than $15,000 each; superintendency, material, and traveling expenses, $20,000 annually. To this should be added a suitable repair ship, the annual cost of which could not be less than $75,000. Total, $125,000. There must also be added coal, cable for repairs, and contingencies, which will vary from $25,000 to $100,000 per annum.

Mr. Hartwell assured the subcommittee that "General Scrymser is in no way, directly or indirectly, interested, or likely to be interested, in the proposed cable," therefore his figures may be taken with credit.

Now, if we add to the said figures the expenses of preliminaries, rights of way, lands, etc., and the cost of a repair steamer, which we know to be $350,000 to $400,000, we have a necessary capitalization of, say, $4,000,000. At 4 per cent the annual charge for interest would amount to $160,000, which, added to his figures for expenses and maintenance, would require $350,000 or more to be received from Government assistance and tolls on business before any dividends could be paid or provision be made for paying the indebtedness incurred in *building* the line.

These figures are borne out by figures given by Mr. Scrymser at the

present time to the subcommittee of the Senate Committee on Foreign Relations, and may be accepted as a basis in forming an estimate for the business of such a line.

If we add for the increased distance, say from Honolulu to Japan, the 5,000 miles which is contemplated by the bill, the first cost would be increased to $10,500,000, and with a second repair steamer and extra stations, etc., the annual expenses would amount to a sum anywhere between $750,000 and $1,000,000, without provision for dividends or payment of bonds and liabilities for construction.

This would seem to be a pretty big risk to take on a guaranteed subsidy of only $160,000 a year, especially with prescribed rates so low that to pay expenses would require 500,000 messages per annum, or over 1,500 per day.

Had this request come from our neighbors in Canada or from parties interested in the long line of really Government railway which runs through that country from the Atlantic to the Pacific in competition with our American railways, and whose lines of subsidized steamers are working hard to control the carrying trade of the Pacific Ocean, we would not be surprised.

The route of the long-contemplated and much-talked-of "all British" cable between Vancouver and Australia has been changed first from Honolulu to Necker Island, and then to Fanning Island, and finally relegated to oblivion because of no landing place or "stepping stone" for the first part of its length. Given the permission of free entry and departure from Hawaii, as would result from the rejection of the "exclusive franchise" from that Government, it would not be long before a British cable would pass through Honolulu.

There is no objection to many lines from Hawaii to the Asiatic countries, Australia, etc., but there is a reason for a monopoly of lines to Hawaii from the North American Continent, and that those lines shall be under the control of the United States Government.

The concession which was granted by the Hawaiian Government is probably the only, as it certainly is the easiest and best method, for carrying out this idea. Had it not been intended to give to the United States the control of all lines of telegraphic cable that might be landed upon Hawaiian shores from the North American Continent, there would have been no necessity or reason for the restriction that "the United States shall join in this undertaking by the grant of substantial assistance."

The plea made by Mr. Scrymser in his letter that the United States should refuse such "substantial assistance" and reject the offer made by Hawaii, for fear that a monopoly may be created in its own interests and for the benefit of its own citizens, and so limit the competition of other nationalities in the Pacific Ocean to the extent of giving American vessels a chance with the heavily subsidized steamers of other countries is somewhat puerile, if not worse.

It may be remembered that the granting of this concession by the Hawaiian Government caused the most serious opposition on the part of the English and German residents of Honolulu, who denounced the Government through public meetings and the press for an act which, as they expressed it, "would prevent the landing of any other than an American cable or line upon the Hawaiian Islands for twenty years." It is therefore no sign of superior intelligence that the gentlemanly writer of the letter referred to finds in this concession a "monopoly" which will effectually close the Hawaiian Islands to any cable lines that might in a *contingency* be used to the detriment of the United States.

It is admitted, as charged in said letter, that "this Spalding Hawaiian cable creates a monopoly"—a monopoly of "American cables" under the control and supervision of the United States! "If this be treason, make the most of it!"

It is also charged that "no other company can expect any assistance from the United States Government for establishing a cable that would reach China and Japan." Again, the gentlemanly writer is correct. It is not intended to ask the United States Government for assistance toward the support of a cable, both ends of which would be beyond its jurisdiction and control. There is no reason why the countries to be benefited by such extension shall not, themselves, assist to the required limit. But if the United States makes provision for the whole line it is hardly reasonable to suppose that Japan or any other country would hurry to pay a subsidy entirely unnecessary on their part.

The attempt, as in the present instance, to befog the main issue by the introduction of extraneous matter hardly needs a more than passing notice.

The rates for tolls will be entirely governed by the demands of business, but the Government may properly protect the public from any chance of unjust charges by prescribing maximum rates as may seem best and proper. This protection, together with the amount of "substantial aid" to be given in return for the free use of such lines and other rights to be granted to the Government, may be wisely left to the fairmindedness of the committee having the bill in charge.

That the extension of a cable line beyond the Hawaiian Islands would be a necessity, to insure the payment of expenses or profits, may be shown by the figures given to the committee by the president of the South American Cable Company as to the probable cost and expense of a line from San Francisco to Honolulu. As a matter of business, such line will extend to any and all points where Government assistance or commercial necessity shall make such extension feasible or profitable.

But it may seem strange that the efforts on the part of the Hawaiian Government and its business men, who have been working for years to establish communication with the United States, should be criticised by "strangers to the manner born" who suddenly find a "monopoly" in such cable communication because it is likely to shut out any interests inimical to the United States.

The bill introduced by Senator Hale asks that the United States may either pay 4 per cent interest on the cost of the cable line, with privilege of taking possession or ownership at any time, or to pay a yearly sum for the transmission of Government messages in the form of an advance payment of tolls, under an agreement that such line shall be subject to the control of the United States and that no other line shall be laid and maintained between the North American Continent and Hawaii without the consent and sanction of the United States.

Originally the bill was designed to give the Government the right to take over and own the line at any time within twenty years, upon the payment of its proper cost, less all receipts from whatever source, and paying the stockholders 5 per cent upon the capital invested by them. An offer has been made, optional with the Government, to carry the messages of the Government free for an unlimited time in consideration of an annual payment or advance of $160,000, the company to pay all cost and guarantee maintenance in proper condition.

Extensions of the line beyond Honolulu are a necessity for its financial success and will follow at early dates. But it is only just that the countries to be benefited shall contribute their share toward such

extensions, and the same may be safely left for them to do. But a guarantee would be given to the United States that the first extension toward Japan shall be via the Midway Islands, landing upon American territory and again under American control.

It may be further stated that any reasonable conditions would be added to give to the United States any rights or privileges your honorable committee might think necessary and desire to have made, even to the granting or assigning to the United States for its sole use and benefit the said "exclusive franchise" from the Hawaiian Government, upon the simple terms and conditions that the United States Government will make use of the same and do the necessary things to carry such concession into effect.

As a statement of facts germane to the subject, I should probably stop here and not longer trespass upon the time and patience of the committee. But the parties representing the company named in Senate bill No. 876 have seen fit to publish, both over the signatures of Mr. Scrymser and Mr. Baylies, as well as anonymously, statements so at variance with the truth and of such venal character, I am compelled to ask indulgence long enough to show the utter falsity and depravity exhibited therein. These statements are the more disingenuous inasmuch as Mr. Baylies first made some of them in an oral argument before the House Committee on Interstate and Foreign Commerce, where he called upon me to correct him if he was wrong, and notwithstanding my full disclamation, he has seen fit to reiterate the falsehood in a manner intended to escape my knowledge. I refer, of course, to his charge that the bill offered in the Senate by Mr. Hale was intended to throw the whole business of such cable line under the control of Sir John Pender, of London.

This charge is made on the strength of a reported conversation with ex-Mayor Hewitt, of New York, and Mr. Baylies adopts the strange method of attempting to prove his words by publishing a letter of his own writing. One may be pardoned for smiling at the unparalled effrontery, and methinks that even a man charged with coveting his neighbor's horse would hesitate to base his defense upon such flimsy testimony.

The only possible reason Mr. Baylies could have had for even an individual opinion against the integrity of Mr. Hewitt, was the fact that to his letter written late on Saturday he had received no answer early on Monday.

I beg to present to the committee a press copy of Mr. Hewitt's reply to Mr. Baylies's letter, bearing date the same day of the month, and with confidence leave to their judgment the issue called forth. For myself, however, I ask to be permitted to brand this charge as utterly false, while I hope it was made without malice.

I also hope that the cowardly brochure containing a tissue of falsehoods, and published anonymously under the title of "Memoranda in respect to Senate bill No. 1316," may be traced to other hands than the gentleman asking recognition from Congress in Senate bill No. 876.

With many years of experience I have never before come in contact with such "methods" in business. The degree of honor with which it may be regarded depends upon the plane from which it is viewed.

This memoranda charges theft of the name "Pacific Cable Company," the writer evidently forgetting that every scheme having for its object telegraphy in the Pacific Ocean has appropriated the name as the only designation proper for such work.

The second charge, *to wit*, that "the Pacific Cable Company of New

Jersey was organized by the Hon. Abram S. Hewitt," has been denied by that gentleman, and I add my own denial to his.

Third. That Sir John Pender, or any other man, ever "obtained an interest in Colonel Spalding's concession" I emphatically and unreservedly deny.

Fourth. That Sir John Pender has been "the chairman of the Eastern Telegraph Company" is quite true, and I think the party or parties who wrote the memoranda knew at the time they did so that Sir John Pender was paralyzed and forever incapacitated for business of any kind. Perhaps, however, they think that, like the Cid, his body may be borne into the fray for many years to the confusion of his enemies.

I will not trespass upon the time of the committee to answer the charges reiterated so often, that if a cable be laid by the company I advocate "English capital will control it," nor will I stop to discuss the possibilities as to what course would be pursued in such event. I will only call attention to the direct falsehoods and misleading statements made, hoping to show the committee that they hold in their own hands the power to protect themselves and the country against even the ghosts raised by the anonymous champions of a nation's honor.

As a "weak point" in the scheme proposed by which the United States would own and control the cable line, figures are given to show that the annual cost to the Government would be $305,000, from which a deduction of $40,000 (the amount of the Hawaiian subsidy) would leave $265,000. But they say this $40,000 will not be allowed or deducted at all times. The bill says "From such sum so to be computed and paid in each year there shall be deducted the sum of $40,000." It further says even the remainder, or sum to be paid by the Government, "shall not exceed a maximum sum to be agreed upon," unless the tolls upon Government messages should exceed said sum, and then only half rates to be paid on such excess of tolls.

Now I beg to call attention to the figures given which, although not false in themselves, are misleading. A schedule of rates from New York to various places is given as valuable expert information and as proof of the existing monopoly of cable lines. From New York to Japan the rate is given as $2.86 per word, seemingly the lowest rate charged, while in truth the regular rate via the Great Northern (Siberia) route has been for years $1.96 per word from London or $2.21 from New York.

These rates may all be found in the report by Commander Clover, published by the United States Government in 1892, and I venture to say that not one word of information upon the subject of cable telegraphs has been given to the committee that was not already made public by Government maps and publications.

The statement made that "the rate prescribed for messages to Honolulu (by the bill they seek to defeat) is $1 per word, and the rates for messages to Asia in case the cable is extended are to be in the same proportion; i. e., a message from California to Japan would cost $3 per word" is false in every particular.

The bill provides that "the maximum rates for transmission of any message, other than United States Government messages hereinbefore provided, over such cable between Honolulu and San Francisco shall not exceed $1 per word, and the Hawaiian concession provides that 'the maximum rates' between Honolulu and San Francisco 'shall be such as shall be agreed upon in any contract which shall be made *between* the contractor, his representatives, or assigns and the United *States Government*,' not exceeding $1 per word."

If this does not leave the matter in the hands of the United States, where does it leave it?

Perhaps it is thought that the gentlemen have themselves a patent on the right to alter and change their bill to suit emergencies and conditions. At least they have shown a chameleon-like aptitude in changing from a position of absolute and unlimited authority to charge what they pleased (no restriction being named in their original bill) to that of a Peter Funk auction sharper bidding against time.

If it be desired to free the Government from any responsibility I would suggest to the committee the advisability of naming a fixed annual sum for which the Government messages shall be carried free, and the limitation of maximum charges or tolls on ordinary messages be fixed at rates in proportion to the volume of business to be done. A provision may be made for tolls on messages to points beyond Honolulu, and a time may be fixed for the extension of such line to Japan, China, and Australia, under penalty of forfeiture of annual payments in the event such extension is not made.

In conclusion, I beg to be allowed to say that while I am entitled to all the privileges of Hawaiian citizenship under unsolicited letters of denization granted to me by that Government, I am a citizen of the United States and have never forfeited my rights to the protection of its laws and flag. In such capacity I have secured the valuable concession I hold from the Hawaiian Government, and I ask that it shall be made use of in the spirit it was granted.

Mr. BAYLIES. I will ask that Mr. Spalding state the substance of what the paper contains.

Senator DAVIS. You will have access to it.

Mr. SPALDING. The argument which I have filed is based simply upon the question of the exclusive right which I have from the Hawaiian Government and is more particularly in refutation of the assertions which have been published in various pamphlets that have been presented to this committee, and I do not know that I can make any oral argument in addition to that which will be of any value to the committee, but I can furnish information from the papers which I have in my possession.

Senator GRAY. Give us the substance of that argument—the points.

Mr. SPALDING. The points are that I hold from the Hawaiian Government a concession for the exclusive right to land cables upon the Hawaiian Islands from any point on the North American Continent or islands contiguous thereto for the term of twenty years. It has been asserted that this concession has been parted with or partially parted with, and I have brought papers with me showing that the concession stands in my name to-day, as it always has done; that there has been no transfer by word or deed of this concession. The bill that was offered in my behalf was intended to give to the Government of the United States the rights which were conveyed to me by the Hawaiian Government in any way that the United States or this Congress might see fit to accept. In the bill it was proposed that the Government should guarantee 4 per cent upon the actual cost of the line; that a maximum sum should be agreed upon beforehand beyond which the company would not be allowed to go—that is, a maximum beyond which the line should not cost, the 4 per cent to be guaranteed by the Government of the United States upon this amount; and then that the Government should pay the actual expenses of running and maintaining the line, with a definite sum fixed as a maximum, and all the receipts from that line to go to the credit of the Government in the way of

reducing the indebtedness incurred on the line, giving the Government the right to take over this line and solely own it without incumbrances at any time within twenty years.

If the company put in a certain sum of its own money in order to build this line beyond the indebtedness incurred by bonds, then when the Government should take hold of the line that sum so invested by the company should be returned to them with 5 per cent interest, and all receipts, both from the Hawaiian Government, which amounts to $40,000 a year, as well as the receipts of the line, were to go to the Government. I am sorry that I have not the pamphlet that has been published here and have not the time to point out that this proposal on the part of this company has been sneered at as not being a business proposition. It was made in good faith, inasmuch as it was supposed that the Government might desire to own this line from the start, to solely control it from the start. At the same time, the right would be given to the United States to dictate at any time whether or not any other line should be built from any part of the North American Continent to the Hawaiian Islands. In other words, the concession which was granted to me would be put under the control of the United States.

At the suggestion of the Committee on Foreign Affairs of the House a substitute was also presented giving Congress, or this Government, the option of paying a fixed sum per annum in lieu of any responsibility on their part. This fixed sum was to give to the United States the right to transfer its messages free over the line or lines of this company until such time as the money so advanced should be eaten up by the tolls on the messages, whether it were twenty years or fifty years; in other words, that the advance by the United States was to be considered as an advance payment of tolls.

The only point I desire to make in the matter is this, that I claim under this agreement with the Hawaiian Islands the sole and exclusive right to land a cable upon those islands. If the Government of the United States, or if this committee, acting at the present time in its behalf, decides that this contract of mine is not valid, is of no use, then I simply say that I come here in no character other than any man might come, asking for a concession or subsidy to build a cable line; but, thinking and believing that this agreement with the Hawaiian Government is a good and valid one, I have come to Congress, as I gave notice to the Secretary of State when it was first given to me that I should do, for the purpose of making an arrangement with Congress to lay this line between San Francisco and Honolulu.

It also provides that a line shall be laid between the different islands. Of course, I suppose you gentlemen are all familiar with these different circumstances, and it will take me very much more than twenty minutes to explain them all. The point is, of course, that the Government of the United States now holds an exclusive right to Pearl River Harbor, with an exclusive right to the telegraph lines or cables from the North American Continent. That acquisition of Pearl River Harbor, in my opinion, would be immensely valuable. The action of Congress, the action of the various Presidents for the last twenty years, has been in favor of maintaining unimpaired the exclusive right which has been granted to the United States. This is not the first time that an exclusive right has been granted by the Hawaiian Islands, and therefore it is no new subject. It was granted a number of years ago to a British subject; that is, an exclusive right was granted to a British subject to land a cable or cables from the North American Continent British possessions.

That concession was not made use of inasmuch as the parties expecting to furnish the capital required that the concession should also include the entire western coast of the United States. The Hawaiian Government refused to give an exclusive right for the coast of the United States to a British subject. A few years ago the same exclusive right was given to Mr. Hartwell, an American citizen living in Honolulu, who came here and had a bill introduced for the same purpose of promoting telegraphy in the Pacific Ocean. The House of Representatives received that bill and the Committee on Foreign Affairs reported it with their approval. The bill was, of course, lost.

Again, when the question came up and it was attempted to build a line or subsidize a private party, when the addition was made to the consular and diplomatic bill in the Senate granting to a private party the contract or right to build this line, the House refused to concur in this matter on the ground that as the Hawaiian Government had given no aid or encouragement to this matter, it was not wise on the part of the United States to go ahead and build the line.

These are the main points, and the particular one is, as I say, the fact of making an exclusive right for the United States. The bill which has been introduced in my behalf has been to grant to the United States all the rights which I hold under this concession. I have also said, and of course am willing to repeat it again, that this concession is at the disposal of the United States Government in any way, shape, or manner that this Congress chooses to exercise it, with the simple requirement that it shall be made use of and that the line shall be made in accordance with it, not in my behalf, but that this concession shall be carried out. I suppose that the bills which have been introduced are quite familiar to the committee. If not, it will take me a very long time to go through with the whole subject, which is hardly worth while.

Senator GRAY. Does the Government of Hawaii consider that exclusive concession binding upon it before anything has been done under it?

Mr. SPALDING. The concession is binding according to the terms of the contract up to the 1st day of May, 1897. After the 1st day of May, 1897, if I do not give them notice that I have commenced to build the line, then they may by giving me sixty days' notice to cancel this concession. It is binding until the 1st day of May, 1897, and, according to its terms, as much longer until such time as the Government of Hawaii shall give me notice in writing that they have canceled it.

Senator LODGE. Is it proposed to go on to Japan and China?

Mr. SPALDING. In relation to going on to Japan, I would explain to the committee that it would be a very hard matter for any company to extend the line to Japan or to Australia without an additional subsidy from the countries to be benefited, but, at the same time, it would be absolutely necessary for the line to be extended both to Japan and to Australia, in order that it should prove a paying business proposition. There is no money in the line landing it at Honolulu, but in the course of events it would undoubtedly become valuable property if it was continued over the Pacific Ocean.

Senator LODGE. Where should you propose to go from Hawaii if you should go on?

Mr. SPALDING. To the Midway Islands, belonging to the United States.

Senator LODGE. You can establish stations there?

Mr. SPALDING. Yes; the islands are capable of maintaining stations. I have a great deal of data in relation to the Midway Islands that I should be very happy to give to the committee at any time when they have sufficient leisure to examine it.

The CHAIRMAN. I think we are pretty well informed about the Midway Islands.

Mr. SPALDING. I suppose so. I should say that I have not given, since I have been in Washington, to any Member of Congress or any member of the committee any information in relation to the cable lines in the Pacific Ocean or the building of those lines, neither do I believe that any other man has given information to this committee that has not been already published and made public by the United States. I can show to the committee, by the publications of the United States, the entire soundings of this line, the cost of lines on the Atlantic Ocean, the weights of the cable, the specifications as to the manufacture of the cable. It has all been published by the United States and is now of record. All the information that I have been able to obtain, outside of these publications of the United States, simply confirms the statements that are made in them. But, as I say, it would be impossible for me to make a very long argument going into all these details.

The CHAIRMAN. If you wish at any time to add any additional information or observations you can give it to us in writing. Now we will hear the gentlemen on the other side.

STATEMENT OF MR. EDMUND L. BAYLIES, VICE-PRESIDENT OF THE PACIFIC CABLE COMPANY OF NEW YORK.

May it please the committee, I desire to ask that Mr. Spalding name the figure that he thinks the United States ought to be called upon to pay. We have had the statement that it would be 4 per cent on the cost and the annual expense, but we do not know exactly what that means.

The CHAIRMAN. That is stated in one of the papers.

Mr. BAYLIES. It was stated in Mr. Hale's argument, when the bill was introduced in Mr. Spalding's interest, at $250,000 a year. I have since understood that Mr. Spalding has modified it so that he would undertake to lay the cable when he should receive, instead of 4 per cent on the cost and the annual expenses, a gross sum. I should like to ask him if that is so, and, if so, what that sum is.

Senator FRYE. That has already been reported to this committee with another bill, which bill has been in the hands of both parties to this controversy.

Mr. BAYLIES. I have not seen it, Senator Frye.

Mr. SPALDING. I had supposed that Mr. Baylies must have seen it, because in his revised bill I saw that he had adopted the same figure.

Mr. BAYLIES. I had not seen the figure, and was not aware that it had been put in such form that it could be seen; I thought it was only in manuscript form. Do I understand, Mr. Spalding, that you do accept the $160,000?

Mr. SPALDING. If you will put any question to me in writing, Mr. Baylies, I will reply in writing.

The CHAIRMAN. That is already stated in the bills at $160,000, as I remember.

Mr. BAYLIES. I will state, Mr. Chairman, that since the bill of the Pacific Cable Company of New York was first introduced in the Senate there have been a number of changes made which have been incorporated in a reprint of the bill, and that reprint I will hand to the committee. Those modifications very materially change the scheme as first

introduced. As the bill was first introduced, the proposition was simply to go to Japan. Now we propose to go to China. As the bill was first introduced, there was nothing said as to a deposit of bonds to insure our carrying out our contract; but you will see that in this modified bill we propose to deposit $100,000 in United States bonds, with the guarantee that that amount shall be forfeited in case we fail to comply with our contract, which is to construct a cable from San Francisco to the Sandwich Islands within eighteen months after the passage of the bill, and within eighteen months thereafter—that is, within three years—to Japan. Of course we shall do it as much more quickly than that as we shall be able.

The CHAIRMAN. Those amendments are printed in different type I see.

Mr. BAYLIES. Yes, sir.

While on this subject let me refer to the question of rates. We agree in our bill that the maximum rate for messages between the United States and Japan and China shall not exceed $1.25 per word, the present rate from San Francisco to Japan being $2.98. So that the committee will see that this is more than a substantial reduction—it is a tremendous cut—but we feel that we can make that concession in order to justify us in coming here and asking for the assistance that we do.

We also fix our maximum rate to the Sandwich Islands at 35 cents a word, which is a proportionate charge on the total distance, assuming that $1.25 is the proper rate between San Francisco and Japan. The rate between San Francisco and the Hawaiian Islands, as fixed in Mr. Spalding's original bill, was $1 per word; I do not know whether that has been modified or not. Mr. Spalding's contract with the Hawaiian Government provides that, in case he extends the line from Honolulu to Japan, for messages to Japan he may charge a rate proportionate to that fixed for telegrams between Honolulu and San Francisco. In Mr. Spalding's contract with the Hawaiian Government that rate between San Francisco and Honolulu was $1. So that if he charges a proportionate rate for messages carried through to Japan from San Francisco, it would make a 3-dollar rate. In other words, that would be more than the present high rate.

As I understand it, Colonel Spalding contends that he has an exclusive contract from the Hawaiian Government until May 1, 1897; that until that contract is out of the way you can not deal with anyone but himself; that a cable must be constructed under his contract, or it can not be constructed at all.

I submit, with all due respect to Mr. Spalding, that that statement is not the fact. I desire to read two extracts from Mr. Spalding's contract with the Hawaiian Government in order to show that what he says is not strictly true. Section 3, Article I, of that agreement reads as follows:

Exclusive grant not to conflict with treaty rights of foreign governments.—And further, that this grant shall not be construed to prevent any foreign government, having existing treaty rights with the Republic of Hawaii allowing any such government so to do, to land a cable upon the Hawaiian group for other than commercial purposes from any point on the North American Continent.

Now, by treaty between the United States and Hawaii, the United States is given exclusive rights in Pearl River Harbor to establish a naval station there, and to do all things necessary for that purpose. That right of the United States is expressly recognized throughout the contract made with Mr. Spalding, and this provision in his contract

was inserted to cover that point. On the face of Mr. Spalding's contract the United States would have the right, either by itself or by such person as it might delegate the right to, to lay a cable for noncommercial purposes to Pearl River Harbor. So that when Mr. Spalding says he has an exclusive right until May 1, 1897, there is just that exception.

Secondly, Mr. Spalding's contract is further conditioned. Section 3, Article II, says:

Grant conditioned upon beginning and completion of cable upon specified dates and performance of other agreements.—Provided, however, and this agreement is upon these further express conditions, viz:

(*a*) That the contractor and his representatives and assigns shall not be entitled to such exclusive franchise, nor to the payment of such subsidy, nor any part thereof, unless the construction of such cables shall begin on or before the 1st day of May, A. D. 1897, and such telegraphic communication be established not later than the 1st day of November, A. D. 1898.

(*b*) And further, that the Government of the United States shall join in this undertaking by the grant of substantial assistance to the contractor, his representatives or assigns.

In other words, Mr. Spalding's grant is expressly conditioned upon the United States Government granting substantial assistance to his undertaking. If the United States Government declines to grant Mr. Spalding's company substantial assistance Mr. Spalding's contract with the Hawaiian Government is not worth the paper upon which it is written, because the same article goes on as follows:

And provided further, That upon the failure to obtain the assistance of the United States Government, as herein specified or upon the breach by or failure of the contractor, his representatives or assigns, to perform or observe all or any of the terms, agreements, or conditions herein contained, the party of the first part or his successors in office may cancel and terminate this agreement and all obligations on the part of the Government thereunder by notifying the contractor, his representatives or assigns, of such cancellation and termination by delivering a written notice thereof at the house of Bishop & Co., in said Honolulu, not less than sixty days before such cancellation and termination shall take place.

If this Congress shall decline to assist Mr. Spalding, within sixty days thereafter the Hawaiian Government of its own motion may terminate this contract with Mr. Spalding and make another contract with any other person in the wide world as it chooses.

Again, suppose that this committee should deem that the Pacific Cable Company, of New York, which I have the honor of representing, offers a better business proposition to the United States and its citizens than does Mr. Spalding's contract, and suppose that Congress should pass the bill which we favor, can anyone suppose for a moment that the Hawaiian Government would not welcome any company that the United States would stamp with its approval?

This concession has been granted, and, as Mr. Spalding truly says, he got the first concession from the Hawaiian Government. But there have been several concessions given by that Government, each one granting to the concessionnaire, or to the contractor, greater inducements for laying a cable. Hawaii has been anxious for the last twenty-five years to have a cable, and it has granted special concessions on at least two previous occasions, all of which goes to show that they are almost desperate in their anxiety to secure a cable; that they will do almost anything to get it. Therefore can it be supposed for a moment that if our company were authorized to lay this cable, and that we came to them and said, "We will lay a cable within eighteen months, we will not ask you to give us a penny, and you will escape this payment of $40,000 a year," can it be supposed for a moment, I say, that the Hawaiian Government would turn us out and say that we could

not land our cable there—even assuming, which we do not for a moment admit, that we should not be allowed to land our cable at Pearl River Harbor? If this Congress stamps with its approval any American company, that company can go there despite this so-called exclusive concession and land a cable and establish itself there.

That being so, it seems to me that there is only one point that this committee, or any committee of either House considering this proposition, should consider, and that on that alone should rest the decision as between these two companies. That point is this: Which company is the better qualified to carry out the undertaking; and which company offers the better proposition to the United States Government?

As to qualifications, I think that the members of this committee are all familiar with what the gentlemen interested in our Pacific Cable Company have done. They have established successfully during the past twelve years the only large American system of cables in the world except the transatlantic cables. They have by cables connected the United States with Mexico and with the South American republics, so that we can now have telegraphic communication from the United States to all the South American republics with the exception of Brazil. We have gone down there and established successful lines and have done good business. They have welcomed us; and where we have gone into territory where we were competing with English lines those countries have preferred to use our lines because we have given better service at low rates.

Now we want to do that same thing in the farther East for the benefit of American commerce, for the benefit of the United States Government, to bring our Government in close touch with the far East in order to enable the merchants of the United States to do business cheaply with the far East.

We are practical people. We are used to building cables. We know how to contract with cable manufacturers in the most effective way. I do not think that anything more needs to be said on that point than to cite you to what we have done in connection with building cables to the South American republics. We know what we want and we know how to do it.

What business proposition ought we to make to this Government? On that point it seems to me that we make a far better proposition than the other company, for we not only will put down a cable to Hawaii but we will put the cable through to Japan for the same amount as is asked for this cable to Honolulu.

Furthermore, we agree that United States messages shall be carried free on that line for all time—not simply until the messages, if charged up at current rates, shall equal the amount that the Government pays in compensation, but if the Government will help us while we are struggling to establish this cable for the first twenty years we will agree for all time to carry free of cost the United States messages.

Giving us money under these circumstances is not a subsidy in the ordinary sense of the term; it is a beneficial contract for the United States, the benefit of which is not to last five, ten, or twenty years, while the money is being paid, but it is to last for all time. It is practically a commutation on the part of the United States for its telegraphic business with the East for all time for a certain fixed payment during twenty years. That sum must be deemed a reasonable one, for it is practically only one-third of what these other people ask for laying a cable.

Senator DAVIS. What is the sum?

Mr. BAYLIES. We ask about $160,000. And since the bill has been modified, we now ask that the bill be changed in that regard so as to make the rate $22 per mile instead of $25 per mile as named in the bill. The maximum mileage is 7,250, which, at $25 per mile, would be about $180,000, which was the first sum asked. But we feel that we can make that reduction in order to put the scheme on a proper business basis. We feel that we want to strain the last possible point in order to make our proposition a favorable one. Therefore, we ask that the bill be changed in that respect to $22 per mile, which will make about $159,500, which is the amount we ask.

The CHAIRMAN. Suppose we should agree to pay you $160,000, what security do you propose to furnish that the contract will be carried out according to its stipulations?

Mr. BAYLIES. We propose to deposit with the United States Government $100,000 in bonds as a guaranty that we will, within the time specified in the bill, proceed at once to lay the cable. No money is to be payable to the company until the cable shall be in proper working shape, which fact is to be certified to by officers selected by the United States Government.

It may be urged that possibly Congress does not at this time wish to incur any new expense when everything is sought to be placed on the most economical basis. As to that I would only say that it requires much time to carry out these schemes, and that it will require probably more than a year to construct this entire cable. But I think we could commence at once, and within six months could have our Hawaiian section constructed, and have the remainder of it constructed in a proportionate time.

Senator MORGAN. Where will you get your cables? Where would they be constructed?

Mr. BAYLIES. In the only country in the world where cables can be made, and that is in England. We have had some propositions from other cable manufacturers in France, but they have not been satisfactory.

Senator MORGAN. So that you would have to go to England with your money and get your cable there?

Mr. BAYLIES. We would have to go to England, unfortunately.

Senator GRAY. As any other cable constructing company would have to do?

Mr. BAYLIES. Yes, sir.

Senator CULLOM. Do you expect money before the work is completed to China, or only to Hawaii?

Mr. BAYLIES. The bill provides that a proportionate amount shall be payable as soon as the Hawaiian section is completed; that would be only about one-third.

Senator CULLOM. That is what I wanted to understand.

Mr. BAYLIES. That would be about $50,000 as soon as the Hawaiian section shall be completed.

Senator FRYE. Do you propose to construct a cable of your own from Japan to China, or from China to Japan, as the case may be; or do you intend to use existing cables between those countries?

Mr. BAYLIES. We are endeavoring now to obtain from the Japanese Government permission to construct such a cable. If we fail in that, owing to certain outstanding rights, we shall make an agreement with the existing company there.

Senator MORGAN. To what point in Japan do you propose to go?

Mr. BAYLIES. Either Nagasaki or Yokohama.

Senator FRYE. Suppose this committee should insist that you go to Japan via Midway Island?

Mr. BAYLIES. We think that would be an impossible point, or, at least, an improper point for a commercial venture to seek, for two reasons: In the first place, the money we should receive from the Governments interested will not support the cable, because the cable must not only have a single line but duplicated lines, which would necessitate the spending of $15,000,000 within the next three or four years For that reason the cable should be so constructed that it might be in touch with countries that already have telegraphic communication. That is one of the reasons why we propose a line that may take us down to the Marshall Islands.

Senator MORGAN. That is under the dominion of Germany. What island do you touch between the Marshall Islands and Japan?

Mr. BAYLIES. We will probably strike none, though we may strike some Chinese or Japanese island; that will depend upon circumstances.

Senator MORGAN. What will be the length of the line?

Mr. BAYLIES. The total length of the line will be 7,250 miles.

Senator MORGAN. No; I mean from the Marshall Islands to Japan.

Mr. BAYLIES. About 2,700 miles.

Senator MORGAN. You think you can construct a continuous line of 2,700 miles?

Mr. BAYLIES. We have returns from the English contractors stating that they can do that.

One of the main reasons why we do not want to go to the Midway Island is that from the information we have been able to obtain we believe it would be very difficult to establish a perfectly satisfactory station there. It is a low-lying sand bar, with no vegetation, and with brackish water. It would not only have to be provisioned, but it would require the constant visits of our steamers. At such a station there would be required a dozen or fifteen men with their families. It would be difficult to keep up the morale of the men there, and in case of sickness it might require the sending of a special steamer. From every standpoint we think it exceedingly undesirable.

The CHAIRMAN. Mr. Baylies, your twenty minutes have expired. The committee would be very glad to hear all you may have to say, and perhaps the committee will be willing to give the other side ten minutes, and to give you ten minutes additional in which to reply.

Mr. BAYLIES. I thank the committee very much.

General SWAYNE. I think they had better have their ten minutes now, and then give me ten minutes additional to reply.

The CHAIRMAN. If that be the desire of the committee, the gentlemen representing the New York company may proceed.

STATEMENT OF MR. JAMES A. SCRYMSER, PRESIDENT OF THE PACIFIC CABLE COMPANY OF NEW YORK.

I shall be glad to answer any questions that the gentlemen of the committee may desire to ask. I had the original concession given by the Congress of the United States thirty years ago, and on that concession I laid cables throughout the West Indies. Since that time I have laid 14,000 miles of cable, connecting all the South American countries. I have been in this business for thirty years. I am familiar with it. Therefore if there is any question with regard to the cost of cables, the length of their life, or their likelihood to injury, I shall be glad to answer.

Senator MORGAN. How much was your annual income from these lines you have been speaking of, derived from the Government of the United States?

Mr. SCRYMSER. The South American lines?

Senator MORGAN. All you have.

Mr. SCRYMSER. I suppose not to exceed five or six thousand dollars a year, although during the Chilean affair I think the United States Government paid us something like $50,000 in one month for telegrams. You can not tell how much telegraphing a government may do in an emergency.

There is one point to which I want to call the attention of the committee, and that is, that in this Hawaiian concession you will find that the rate is fixed at $1 a word from San Francisco to Honolulu and a proportionate rate from Honolulu to Japan.

Senator DAVIS. Is it $1 a word absolutely, or "not to exceed?"

Mr. SCRYMSER. "Not to exceed." The rate at the present time is $2.86. If the Government of the United States makes a contract with the holders of this Hawaiian concession to a certain extent it inherits the rates they have fixed. I have been through this rate business very often, and I find always that in these concessions there is some one point that is going to be protected. The rate to Japan, $3 a word, would be 14 cents more than is being charged to-day. I followed that up and I discovered that Sir John Pender, who is chairman of the Eastern Telegraph Company, operating some 14,000 miles of cable, which to-day monopolizes the traffic to the East, was a party to this contract, and that this rate of $3 from the United States to Japan was for no other object than to protect that English monopoly. In other words, if the United States takes this Hawaiian contract and pays $160,000 a year, Sir John Pender knows that no cable can ever be built from the United States that will interfere with that English monopoly. Do you want to create a monopoly and perpetuate an English monopoly?

Senator FRYE. There is no difficulty, I suppose, Mr. Scrymser, in this committee providing in a bill that the rate from here to Japan shall not exceed the same amount that you put in your bill, is there?

Mr. SCRYMSER. No, sir.

Senator FRYE. That is what I thought.

Mr. SCRYMSER. But I have not seen any indication that it is proposed to do that, and my object in explaining this is to see that there is fair play in the matter of these rates.

Senator MORGAN. Do you not suppose that General Swayne and Mr. Spalding are as patriotically disposed toward our Government as you are?

Mr. SCRYMSER. Yes, sir; but I think Mr. Hewitt is observant and capable when he makes a subscription of $150,000, guaranteed by Sir John Pender. I do not think that was a very patriotic move. I was invited to go into this scheme by Mr. Hewitt, and I declined it. That is all I have to say on rates.

The CHAIRMAN. You have five minutes more, if you desire to occupy the time.

Mr. BAYLIES. I have not sought, if the committee please, to make any charges about this other company, and I do not make any, but I simply desire to submit to the consideration of this committee the correspondence that took place between myself, as vice-president of the Pacific Cable Company, and Mr. Hewitt. Mr. Hewitt must be considered as authorized to speak for the Pacific Cable Company of New Jersey. I do not say that he is; I do not know that he is anything more than a

director in that company. I do not know that his statements bind that company in any way, and I do not charge that they do. But I do think it very significant that Sir John Pender should have so great an interest in this Pacific Cable Company of New Jersey, and in its proposed scheme to build simply a cable to Hawaii unless he thinks there is going to be some profit in it for his English business in allowing the scheme of Colonel Spalding to succeed, and I think he would not, unless he saw his interest in it, have taken the steps that he has taken.

I do not know whether the company have seen copies of this corre spondence. I asked to have it sent to them yesterday.

The CHAIRMAN. I have received it and suppose all of the members of the committee have.

Senator MORGAN. I did not get a copy. Please let me have one.

Senator DANIEL. I will thank you for one.

Mr. BAYLIES. This little pamphlet contains my letter to Mr. Hewitt and his reply. In the pamphlet I have quoted an extract from a speech of Sir John Pender, made at the semiannual meeting of the Eastern Extension Australasia and China Telegraph Company, Limited, held in the spring of 1894, and which shows how carefully he has thought out the entire scheme of cables in the Pacific. I desire to call especial attention to the last sentence in that speech:

> I am quite satisfied that there is no immediate prospect of contracts being inquired for in connection with this Pacific cable, but when they are you may depend upon it that I shall take good care that I know all about the matter.

It is conceded that Colonel Spalding went to England and saw Sir John Pender and discussed his plans with Sir John. I do not for a moment suppose that Colonel Spalding has any idea of putting his company into English hands; I do not make that charge, and have never said anything of that kind. But the Englishman saw his opportunity to do, and was very glad to do, what he could to assist in the establishment of that cable company; and I do think, and all the conversation you have had here this morning with Colonel Spalding leads me to think, that his main object here is to establish a cable to the Hawaiian Islands only. If that is done and that cable receives compensation from the United States Government as provided in his bill, the inevitable result will be that the cable will not extend beyond the Hawaiian Islands. If that is the result the Englishman's desire will have been accomplished, for if the Hawaiian Islands are no longer accessible as a landing place for a cable then there will be no successful cable laid between the United States and Japan.

Looking at this subject in the broadest possible way, as to whether you want a cable built as quickly as possible to Japan, whether this proposition that we make to you is not the best proposition, and whether we are not giving you more for the compensation that we ask, I respectfully submit that the company that I have spoken for is in a position to do better by the Government and offers to do better than is offered by the other plan, and simply as a question of business as to which is the more favorable of the two contracts for this Government to make, I would bespeak the favorable consideration of this committee for the company that I represent.

Senator MORGAN. You do not mention anything about the possibility of a cable to the coast of China. Is that in your contemplation at all?

Mr. BAYLIES. In our bill as amended it is proposed that, if this cable be extended by our company to the coast of China, an additional amount be paid to the company for mileage not to exceed 700 miles,

which at the rate here named, $22 per mile, would make $14,000 additional.

Senator MORGAN. In going to the coast of China from Honolulu what route would you take?

Mr. BAYLIES. We would touch Japan first, or some dependency of Japan.

Senator MORGAN. What dependency?

Mr. BAYLIES. We would either touch Yokohama or Nagasaki, or touch one of the islands south.

Senator MORGAN. Would you touch Formosa?

Mr. BAYLIES. We may touch the Bonin Islands or the Loo-Choo Islands.

Senator MORGAN. Would you touch Formosa?

Mr. BAYLIES. I think it is rather too far south, and as it lies west of Japan we would have to come back to Japan; and besides it would make too long a stretch across to Formosa from the Marshall Islands.

Senator MORGAN. If you want to go to Japan and China also, you would have to get concessions from both those Governments?

Mr. BAYLIES. Yes; we have been dealing with Japan for the past five months. We have an agent there to whom we have given a power of attorney, authorizing him to contract in the name of this company exactly in the same form that we have tried to contract with this Government, only we have asked the Japanese Government to give us $200,000.

Senator MORGAN. Have you made any overtures to the Chinese Government?

Mr. BAYLIES. No; because we have supposed that that Government would not be in a position to pay us anything. But the Chinese Government is not tied up by any exclusive concessions, and, from what has been stated in the past, and, in fact, from what was said the other day by Senator Hale in his speech, when he quoted from a report of the United States minister in China, made some three years ago, in which he said that the Chinese Government would welcome closer telegraphic communication with the United States, I have no doubt that Government would grant such permission.

STATEMENT OF GENERAL WAGER SWAYNE, ON BEHALF OF THE PACIFIC CABLE COMPANY OF NEW JERSEY.

MR. CHAIRMAN: Having but ten minutes, you will pardon me if I confine myself strictly to narrative as a means of saving time.

About a year ago a gentleman with whom I served in the same brigade all through the war, and whom I had known ever since as a most honorable and successful business man, who had gone to the Hawaiian Islands and by square business, with a most honorable record, amassed a private fortune equal to tackling such an enterprise as laying down a cable from San Francisco to Honolulu, if need be from his private means, came to me and said: "We desire to benefit the Hawaiian Islands primarily, and to be of some service to the United States." He had obtained a concession, which is before you. Being about to return to Paris, where his family were, he left with me written authority to organize a company which should proffer to the United States two things:

First, to construct a cable from San Francisco to Honolulu; and

Secondly, to put that cable, when constructed, at the service of the United States upon such terms as should preclude the possibility of private speculation.

I had an absolute carte blanche as to the personnel of the corporation. Feeling that this was a very important trust, the first man to whom I had recourse was my father's friend, Mr. Abram S. Hewitt, of whose telegraphic connections elsewhere I knew nothing. I simply asked for an interview, and said to him that I wanted the same kind of a conference with him that I should seek from my father if he were living. He then told me that he had certain relations with Sir John Pender which would preclude his going into such an enterprise except with Sir John Pender's consent and approval. I told him that one thing I had to insist upon under my instructions from Colonel Spalding was that the enterprise should be and should remain, from first to last, distinctively an American enterprise. He told me that he thought Sir John Pender would have no objection to his being connected with an enterprise of that kind, but said that he would correspond with him, and they did have some correspondence.

I do not care to go into the details of the results of that correspondence further than to say that it removed absolutely all restrictions from Mr. Hewitt's cooperation in constructing such a line. My object in seeking him was to remove all political aspects or controversies from the matter, as well as to get the advantage of his undoubted probity and business judgment.

With regard to the charge which has been made to you against him just now in your hearing by Mr. Scrymser, I can only say that I yesterday explained to Mr. Scrymser very carefully that Mr. Hewitt had pronounced that statement untrue, and I explained to him that the proofs that it was untrue were within my own manual possession and cordially at his service. I can not say more than that. Of course I am very sorry under these circumstances that he made it, but that is ended.

Beyond that I take it that this committee will not concern itself with the trivialities. It has not time for them even if they were worthy of the attention of the committee. The committee, as I judge it, has three or four substantial propositions to consider, and they are quite as many as the committee can give due attention to without going into minor matters.

The first question is as to how far, in the judgment of this committee, it is desirable that such a cable should be constructed and what kind of a cable it is desirable to build.

I drew the original bill quite different from that which is here now, I ought to say, in two aspects. Having had daily familiarity for twenty years with the ghastly consequences of overcapitalization and particularly with the overpayments, and daily familiarity for twenty years with the overpayments made by the United States to the Pacific railroad companies, I put into the bill as originally drawn a proviso that sworn statements should be filed with the Postmaster-General annually in regard to the expenses of operation and maintenance; in other words, that whatever state of facts might be developed in the future the basis of payments by the United States should be authenticated at the time of the expenditure by the sworn statements of all parties concerned.

I put in a further proviso that the Postmaster-General might, if he saw any reason whatever to question those statements or any of them, send them to the Court of Claims for positive adjudication as to their verity. That has been taken out, as I have been told since, at the request of the committee here. I heartily wish it were back.

Then I put in a proviso that the United States might take the property at any time *upon the basis* of those statements, as verified by adjudication, *it may be.*

Next I put into the bill, of my own motion, what I regarded as very important—a guaranty of performance. I hope the committee will forgive me if I go for a moment into an explanation of the necessity of such a guaranty, without any personal reflections or comparisons whatever, which I emphatically disclaim. But the committee will see in a moment that from the whole of the continents of North America and South America there is a very large telegraphic business now done with Australia, China, and Japan, and that all goes now over the Atlantic and over European lines. Of course it is to the pecuniary interest of everybody concerned in those lines that there should not be a trans-Pacific line.

Ten years ago, I think, I being at that time the general counsel of the Western Union Telegraph Company, went to the president of that company and said: "Here is a friend of mine talking about a transpacific line; had we not better take hold of it?" His reply was, "No; that they had a great deal rather bring their messages from California here and get the transatlantic tolls than to carry them the other way and lose the transatlantic tolls." I point that out to you simply as a consideration why I put in the guarantee of $100,000. I have since come to doubt and perplexity about that because I can see in a moment that $100,000 is a trifle. There is more than one interest—there may be a half dozen single interests—that could afford to lose $100,000 to prevent the construction of a transpacific cable, and perhaps the guarantee ought to be very much larger.

But I suggest to you simply as plain business men, which is all I am myself in this aspect, that whatever contract you may make you take care that its performance is reasonably secured, and that it is not an underbidding for the sake of preventing the carrying out of any contract.

Senator GRAY. What assurance can you give us that this cable will certainly go to Japan?

General SWAYNE. I am coming right to that.

As I say, I drew that bill, but the granting of that concession at once provoked world-wide discussion, particularly in the English newspapers, because it had been granted to an American subject, they claiming that there should be at once diplomatic intervention to get rid of its exclusive character, because that would prevent the construction of the projected cable from the Canadian Pacific lines over to Japan.

That brings me for a moment, if you please, to the character of the concession. One aspect of it which has not yet been adverted to here, and which I think is significant to you, is that if you will read that concession you will see that it provides for and requires an interisland communication in Hawaii. If you toss aside that concession as a thing of naught, and make your contract with somebody who is on record, in phamphlets and otherwise, as having derided that concession and sought to have it thrown aside, then when that party comes to deal with the Hawaiian Government, that party must confront the natural irritation resulting from its being the party that has deprived the islands of interisland communication.

My friend, Colonel Spalding, has spent thirty years of his life on a little island 90 miles from Honolulu, where he has been of immense value to the whole of the Sandwich Islands' interests. He has had men come from all over the country—not many, but three or four—to *talk with him* about sugar making and how best to do it, and I think I *may say* that he is perhaps the leading planter in the islands.

We came here with a project for constructing a cable to the islands, purposely saying nothing about Japan for this very obvious reason: It is right—I think you will agree that it is right—that the Japanese Government should bear some part or so much of the public burden as the exigencies of private commerce require should be a public burden to be assumed for the sake of the construction of these cables. If you make a contract binding any cable to go to Japan one of two things must follow. Either the Japanese Government will take, what is after all really the human view of it, and say, "You have got to come in after all; why should we pay you to come?" or else the party must say to the Japanese Government, "I can afford to forfeit what I have put up, and I will do it if you do not grant us a subsidy."

Consequently the position which was taken in the bill which I drew was this: That we would undertake with all reasonable guarantees to build a cable to the Sandwich Islands, and that we would do it upon such terms as upon reasonable investigation would satisfy any committee of Congress that the total revenues which we were to receive would leave no interest whatever upon our money, and would be less by, say, $40,000, $50,000, or so many thousand dollars a year, than our certain and necessary outgo.

Perhaps I may go so far as to say that we did not go at this thing half way. We had a definite contract for the construction, operation, and maintenance of this cable when we came here. We got bids from the leading contractors all over the world, and we secured one proposition, and that is at your service, that they should operate the cable and take its entire revenues until such time as we saw fit to take the cable off of their hands.

The CHAIRMAN. While we are all very much interested in your statement, General, I feel bound to say that your time has expired.

General SWAYNE. Nobody can stop a clock, your honor. I am through.

Mr. SCRYMSER. I should like to read one paragraph from Mr. Hewitt's letter.

General SWAYNE. In that case I should desire to be permitted to read another paragraph.

Senator FRYE. We have his letter here. It has been sent to every member of the committee.

Mr. SCRYMSER. Here is his signature if there is any doubt about it.

General SWAYNE. And here is his signature if there is any doubt about that. I told Mr. Scrymser yesterday that Mr. Hewitt had made certain statements under misinformation as to his relations with Colonel Spalding and Sir John Pender.

The CHAIRMAN. I will say to the gentlemen on both sides that if they desire to add anything further we will print it.

Mr. SCRYMSER. We would like very much to do so.

The CHAIRMAN. I say that for the benefit of both sides.

Mr. SCRYMSER. Thank you, very much.

Senator CULLOM. I wish we had the time to hear all these gentlemen have to say.

General SWAYNE. Let me suggest, with a view of the possibility of further hearings, that if you find time you turn to the preface of 10 Coke's Reports and see where the old gentleman says, in substance, that nothing done by men engaged in causes, especially causes de tortuosa, does so bring out the truth as the conduct of causes in the court room; and again, where he says, "I am devoutly persuaded that the

wisdom of God is there directed to bring right-minded men to just conclusions."

The CHAIRMAN. That is an old quotation.

Senator CULLOM. And a very good one.

CONCESSION OF HAWAII TO Z. S. SPALDING.

This agreement, made this 12th day of August, A. D. 1895, by and between Sanford Ballard Dole, President of the Republic of Hawaii, for himself and his successors in office, and in behalf of the Hawaiian Government, and by and with the consent of the cabinet, party of the first part, hereinafter called "the Government," and Zephaniah Swift Spalding, of Honolulu, Hawaiian Islands, party of the second part, hereinafter called "the contractor," witnesseth:

AGREEMENTS BY THE GOVERNMENT.

ARTICLE I.—*Grant of exclusive franchise.*

SECTION 1. In consideration of the covenants, agreements, and undertakings hereinafter contained on the part of the contractor or his representatives or assigns to be kept or performed, the said party of the first part, in the exercise of the power to him granted by the provisions of an act entitled "An act to facilitate the construction and maintenance of telegraphic cables in the Pacific," approved on the 12th day of August, A. D. 1895, and of every other power, if any, him hereunto enabling, doth hereby grant, concede, and confirm unto the contractor and his representatives and assigns, upon the terms and conditions hereinafter contained, the sole and exclusive privilege and franchise for and during the full term of twenty years from the 1st day of November, A. D. 1895, to construct or land upon the shores of the Hawaiian group a submarine electric telegraph cable or cables to or from any point or points on the North American Continent or any island or islands contiguous thereto.

SEC. 2. *Cable to terminate at San Francisco and be maintained for twenty years.—Provided, however*, and this agreement is upon these express conditions, viz, that the first cable which shall or may be constructed or laid under this franchise, and for the maintenance of which a subsidy is herein agreed to be paid, shall have its eastern terminus at or near San Francisco, Cal., and its western terminus at or near Honolulu, and shall be maintained in working order in conformity with and subject to the specifications, conditions, and agreements hereinafter contained for the full term of this agreement.

SEC. 3. *Exclusive grant not to conflict with treaty rights of foreign governments.*—And further, that this grant shall not be construed to prevent any foreign government, having existing treaty rights with the Republic of Hawaii allowing any such government so to do, to land a cable upon the Hawaiian group for other than commercial purposes from any point on the North American Continent.

ARTICLE II.—*Grant of subsidy.*

SECTION 1. *Amount and term of subsidy.*—And the Government doth hereby further covenant with the contractor, and his representatives and assigns, that there shall be paid to him, his representatives or assigns, by the Government of the Hawaiian Islands, upon the terms and conditions hereinafter set forth, subject to ratification hereof by the

legislature of the Republic of Hawaii, an annual subsidy of $40,000, gold coin of the United States, for and during the period of twenty years from the date of the establishment by the contractor, or his representatives or assigns, or telegraphic communication between the city of Honolulu, in the Republic of Hawaii, and a point at or near San Francisco, Cal.; and between the said city of Honolulu and the islands of Hawaii, Maui, Molokai, and Kauai.

SEC. 2. *Time and place of payment of subsidy.*—Such subsidy shall be paid to the contractor, his representatives or assigns, at the treasury of the Government in said Honolulu, by the minister of finance of the Government, or his successor in office, in equal quarterly installments of $10,000 each, during each and all of the years of said above-mentioned term of twenty years.

Subject, however, to suspension or cancellation upon the terms and conditions hereinafter set forth.

SEC. 3. *Grant conditioned upon beginning and completion of cable upon specified dates and performance of other agreements.—Provided, however,* and this agreement is upon these further express conditions, viz:

(*a*) That the contractor and his representatives and assigns shall not be entitled to such exclusive franchise, nor to the payment of such subsidy nor any part thereof, unless the construction of such cables shall begin on or before the 1st day of May, A. D. 1897, and such telegraphic communication be established not later than the 1st day of November, A. D. 1898.

(*b*) And further, that the Government of the United States shall join in this undertaking by the grant of substantial assistance to the contractor, his representatives or assigns.

And provided further, That upon the failure to obtain the assistance of the United States Government, as herein specified, or upon the breach by or failure of the contractor, his representatives or assigns, to perform or observe all or any of the terms, agreements, or conditions herein contained, the party of the first part or his successors in office may cancel and terminate this agreement and all obligations on the part of the Government thereunder, by notifying the contractor, his representatives or assigns, of such cancellation and termination by delivering a written notice thereof at the house of Bishop & Co., in said Honolulu, not less than sixty days before such cancellation and termination shall take place.

But the rights and privileges of the contractor and his representatives and assigns under this agreement shall not be terminated by his or their failure to begin the construction of the cable herein provided for, and establish communication thereon as herein provided for, upon the dates herein specified, or upon or by reason of any other breach of any condition, or any failure to keep or observe any covenant or agreement herein contained on the part of the contractor, or his representatives or assigns, to be kept or performed, unless and until the Government shall in writing notify him or them that it has canceled this agreement by reason of such breach or failure, by delivering such written notice at the said house of Bishop & Co., not less than sixty days before the date upon which such termination and cancellation are to take effect.

SEC. 4. *Suspension of subsidy during temporary failure of cable.*—(*c*) And further that in case of a failure or interruption of efficient electrical connection and communicating power over the said cable or cables between the points hereinafter specified, or any of them, for a period of more than ninety consecutive days, from any cause other than gov-

ernmental restraint or illegal obstruction, the Government shall not be bound to pay the said subsidy in full, but may deduct therefrom a proportionate amount for the period of such interruption, as follows: For the time of failure or interruption of such communication between San Francisco and the Hawaiian Islands, beyond said term of ninety consecutive days at the rate of $30,000 per annum; for the time of failure or interruption of such communication between the said islands, or any of them, beyond said term of ninety consecutive days, at the rate of $10,000 per annum.

SEC. 5. *Cancellation of contract in case of failure for one year.—And provided further*, That if the said line or lines, or either of them, shall fail to furnish such communication for a period exceeding one year beyond such term of ninety consecutive days, then and in such case the Government may, at its option, cancel this contract as far as it refers to the line or system so interrupted, and it shall thereupon be freed from all obligations to pay any further subsidy on account of the line or system so interrupted.

That is to say, if the line upon which such communication is so interrupted shall be a part of the interisland cable system it shall be relieved from the obligation to pay $10,000 per annum of said subsidy.

And if the interruption of such communication for such period be on the line between San Francisco and Honolulu it shall be relieved from the obligation to pay $30,000 per annum of such subsidy, and the grant of an exclusive franchise to lay and maintain a cable to or from the North American Continent to the Hawaiian group and of all other rights and privileges referring or relating to such line or system herein contained shall thereupon and thereby become and be null and void.

ARTICLE III.—*Other privileges.*

SECTION 1. *Rights of way and building sites.*—And the Government doth hereby further grant to the contractor, his representatives and assigns, for the said term of twenty years, the free use of a right of way across all Government lands for the landing of any such cable or cables or the construction of any land lines connecting the same, and of suitable sites on any Government lands which may be approved by the Government, for the construction of stations and storehouses for the maintenance or operation of the cable or cables, and doth covenant with the contractor, his representatives and assigns, that during the period of twenty years from the date of the establishment by the contractor, his representatives or assigns, of telegraphic communication between the said city of Honolulu and the other points herein specified, the contractor, his representatives and assigns, shall continue to have the free use of such rights of way and sites.

SEC. 2. *Exemption from duties.*—And also that during the said term of twenty years there shall be admitted into the Republic, free of all duties, all material to be used exclusively in the construction, maintenance, or operation of any such cable or cables.

SEC. 3. *Exemption from taxes.*—And also that for the said term of twenty years no taxes shall be levied upon the property of the contractor, his representatives or assigns, located in the Republic, belonging to or connected with such cable or cables and necessary or properly appurtenant to the construction, maintenance, or operation of such cable or cables.

SEC. 4. *Exemption from port charges.*—And also that during such term of twenty years no harbor or port dues or charges, except pilot-

age, shall be levied upon or collected from any vessel or vessels exclusively engaged in laying or maintaining any such cable or cables, or which may be stationed in the waters of the Republic for such purposes.

SEC. 5. *Grant of power of eminent domain.*—And also that during such term of twenty years the contractor, his representatives and assigns, shall have the power and privilege to condemn and appropriate, according to law, such property or rights of way as may be necessary for the construction, maintenance, or operation of such cable or cables and the land connections thereof.

AGREEMENTS OF THE CONTRACTOR.

ARTICLE IV.—*Location and equipment of lines.*

SECTION 1. *Specification of location of lines.*—In consideration of the several grants and covenants of the Government hereinbefore contained, the contractor, for himself and his representatives and assigns, doth hereby covenant to and agree with the said party of the first part and his successors in office that he, the said contractor, his representatives or assigns, will, on or before the 1st day of May, A. D. 1897, begin to construct the cables necessary to connect the several points herein specified, and that he, the said contractor, his representatives or assigns, will, on or before the 1st day of November, A. D. 1898, construct, complete, lay, equip, and establish in efficient working condition cables as follows:

From a point on the west coast of California, at or near the city of San Francisco, to a point at or near the said city of Honolulu.

And also from the Island of Hawaii, at or near Kawaihae, to the Island of Maui, at or near Nuu.

And also from the Island of Maui, at or near Napili, to the Island of Molokai, at or near Pukoo.

And also from the Island of Molokai, at or near its west point, to the Island of Oahu, at or near Waikiki.

And also from the Island of Oahu, at or near Waianea, to the Island of Kauai, at or near Nawiliwili.

And also will construct all necessary stations and connections, so as to make such cable and cables available for communication to and from each of such islands.

The landing places at the several termini mentioned shall be at such points on the said respective shores as shall be determined by the engineer in charge of the work.

SEC. 2. *Interisland land lines.*—And the contractor doth further covenant with the Government that he, his representatives or assigns, will, on or before the said 1st day of November, A. D. 1898, construct and equip and connect with such cable and cables all necessary land lines and stations on each of the said enumerated islands, so that efficient telegraphic communication may be maintained between Honolulu and a point at or near said San Francisco, and between Honolulu and each of the said islands, and between each of said islands and any other of said islands.

SEC. 3. *Maintenance of lines.*—And further, that after such cables and land lines are so constructed, laid, and placed in operation, the said cables and land lines, and each and every one of them, shall be, during the term of twenty years thereafter, continuously and fully equipped, operated, and maintained, so that the same shall and will constitute and form reliable means of telegraphic communication between the points enumerated.

SEC. 4. *Proviso for delay in certain cases.—Provided, however,* That if any delay in constructing, laying, and completing the said cable or cables shall be caused or arise from any strike, lockout, or any other combination preventing the contractor's works, or any of the trades or occupations upon which the contractor, his representatives or assigns, or manufacturers of cable from which he is or they are obtaining the cable, shall be dependent in carrying out any contract or work necessary to the proper fulfillment of the contract; or shall be caused by any restraints or obstructions occasioned by any governmental authority, or otherwise than by the default of said contractor, his representatives or assigns, then or in any such case the time for completing such cable or cables shall be extended for such period or periods as shall be certified to be reasonable by a competent electrical engineer, who shall be approved by the Government.

SEC. 5. *Exemption of contractor from liability under certain conditions.—And provided further,* That the contractor, his representatives, or assigns shall not be responsible in damages to the Government for any delay or failure in manufacturing or laying the said cable or cables, except such as may be caused by the culpable neglect of the contractor, his representatives, agents, or assigns in carrying out the terms of this agreement, the true intent and meaning of this agreement being that the contractor, his representatives, and assigns shall take all reasonable precautions and use their best endeavors to construct, lay, and operate the said cable or cables between the said respective points within the time specified, but that he and they shall not be responsible in damages if he and they shall bona fide use his or their best efforts to accomplish such object.

ARTICLE V.—*Ownership of interisland lines.*

SECTION 1. *Government option to assume ownership of interisland lines.*—And the contractor, for himself and his representatives and assigns, doth hereby further covenant with the Government that if so requested in writing by the Government, within one year after the said interisland cable system is completed, he, the contractor, or his representatives, or assigns shall and will sell, transfer, and convey to the Government all of the said interisland cable and cables, and the equipment, stations, and appurtenances, poles and land lines, and everything thereunto appertaining, charging and receiving therefor only the actual cash cost of the said land lines, stations, and equipments, and making no charge for the construction, laying, or furnishing of such submarine cables.

SEC. 2. *Government title to interisland cables to be free from all liens.*—If the Government shall so acquire such interisland cable system it shall acquire and hold it free from any obligation to pay any indebtedness or any bond or bonds or interest thereon, or any part thereof, which may have been incurred, created, or executed in, upon, or concerning the same, and free from any and every other debt, obligation, and lien of any kind whatever.

But nothing herein contained shall be so construed that such acquiring of such interisland cable system shall release the Government from the obligation of continuing to pay the full amount of the subsidy hereinbefore granted.

SEC. 3. *Government acquisition of interisland cable to release contractor from responsibility therefor.*—If the said interisland cable system shall be acquired by the Government, the maintenance and operation,

and all costs, charges, and expenses of maintaining and operating such interisland cable so conveyed shall, from the date of such conveyance, be conducted, borne, and sustained by the Government; and the contractor, his representatives and assigns, shall, from and after such date, be relieved from all responsibility and expense for or concerning such system, and no interruption or failure of communication occurring in such interisland cable system after the same shall have been so acquired by the Government shall work, or be made the cause, directly or indirectly, of the suspension or forfeiture of the subsidy hereby granted, or any part thereof, or be made a ground for the forfeiture of this agreement or any privilege hereby granted.

ARTICLE VI.—*Use of cable ship.*

And the contractor, for himself and his representatives and assigns, doth further covenant with the Government: That if the said interisland cable shall be conveyed to the Government, the contractor, his representatives and assigns, will at all times allow the cable repairing ship owned by or controlled by him or them to be used by the Government in the repair or replacing of any of the cables in such interisland system, charging therefor only the actual cash outlay of the contractor, his representatives or assigns, in making such repairs or replacement.

ARTICLE VII.—*Specifications of size, weight, materials, and efficiency of cables.*

And the contractor doth hereby further covenant with the Government that the manufacture, size, and weight of the material used in and the method of storing and laying the said cable and cables shall be in accordance with the several specifications hereunto annexed and made a part of this agreement.

And further, that all of such cable or cables so to be constructed, laid, equipped, operated, and maintained and all instruments and appliances shall and will be manufactured and constructed throughout in a good and workmanlike manner and of the best materials.

And further, that each and every of the said sections of cable shall, during the said term of twenty years, be continuously, except as herein provided, capable of efficiently transmitting not less than fifteen words per minute between the several points herein specified.

And further, that during the said term of twenty years efficient operators shall be maintained at each of the stations on said lines, who shall and will transmit over said cable lines all messages at such stations received for transmission at such rate of speed for the rates of tariff herein provided for.

ARTICLE VIII.—*Schedule of rates.*

SECTION 1. *Interisland rates.*—And the contractor, for himself and his representatives and assigns, doth hereby further covenant with the Government that during the continuance of the terms of this agreement the maximum charge for messages transmitted over the said interisland cable system, from the point of receiving such messages to its point of destination, shall not exceed the following prescribed limit, viz, not to exceed 10 cents for each word so transmitted.

Provided, however, That it shall not be obligatory upon the contractor, his representatives or assigns, to send any message for less than $1.

SEC. 2. Foreign rates.—And further, that during such period the

maximum rates for the transmission of any message, other than Government messages, to or from the Hawaiian Islands over such cable between Honolulu and San Francisco, shall be such as shall be agreed upon in any contract which shall be made between the contractor, his representatives or assigns, and the United States Government, not exceeding $1 per word, and any contract with such Government shall prescribe a maximum scale of rates.

And further, that if telegraphic communications shall be hereafter established between the Hawaiian Islands and Australasia or Japan, the rate to be charged for any message transmitted from Honolulu to San Francisco, or from San Francisco to Honolulu, shall not exceed a pro rata proportion, based on distance, of the regular rate for transmitting a similar message to or from San Francisco and Australasia or Japan.

And further, that messages from Honolulu to points beyond San Francisco shall not be charged higher rates beyond San Francisco than the rates which the contractor may be charged for the transmission of the same.

SEC. 3. *Press rates.*—And further, that the rates for ordinary messages or items of news to any newspaper or news bureau of the Republic of Hawaii (commonly known as press messages) shall not exceed one-half the rate which shall be charged for other messages, excepting messages to or from the Hawaiian Government, or any officer thereof in his official capacity, or to or from any foreign Government

Provided, however, That it shall not be obligatory upon the contractor, his representatives, or assigns, to send any press message for less than $1.

SEC. 4. *Hawaiian Government rates.*—And further, that during the said term of twenty years all messages concerning the official business of the Hawaiian Government, to or from the Hawaiian Government or any of its officials, transmitted over said interisland system of cables, or over the said cable from Honolulu to San Francisco, shall be transmitted free up to the amount of the annual subsidy paid by the Government to the contractor, his representatives or assigns, reckoning the charge and scale of rates for such Government messages at the rate herein prescribed and provided for ordinary messages.

ARTICLE IX.—*Security for execution of contract.*

SECTION 1. *Deposit of bonds with minister of finance.*—And the contractor, for himself and his representatives and assigns, doth hereby further covenant with the Government that he will, upon the execution of this agreement, deposit with the minister of finance of the Republic of Hawaii, Hawaiian Government bonds to the amount of $25,000 as security that he and his representatives and assigns will construct, lay, and equip the said cables and land lines in accordance with the terms and conditions of this agreement.

Upon the completion of the construction, equipment, and laying of said systems of cable and land lines in the manner herein provided for, the obligation and obligations secured by such bonds shall be deemed to have been fulfilled and performed, and such bonds shall thereupon be returned to the contractor, his representatives or assigns.

But if after the beginning of the construction of said cables, in manner herein specified, there shall be any failure to complete the construction, laying, and equipment of such systems and such land lines within the time herein specified, then and in such case such bonds shall be forfeited to the Hawaiian Government as liquidated damages, and there

shall be no further or other claim by way of damages by the Government against the contractor, his representatives or assigns.

SEC. 2. *Contractor may cancel this contract within a specified time.—Provided, however*, That the contractor, his representatives or assigns, may at any time prior to the 1st day of May, A. D. 1897, notify the Government of his or their desire to cancel this contract, whereupon this contract shall become null and void, and such bonds so deposited as security shall thereupon be forthwith returned to the contractor, his representatives or assigns.

ARTICLE X.—*Definition of "beginning of construction."*

It is hereby mutually agreed that the beginning of the construction of the cables specified in section 1 of Article IV of this agreement shall be construed to mean, and shall mean, the completion and execution of a contract between the contractor and a responsible cable construction company or companies for the construction and laying of such cable and cables within the period limited by the terms of this contract, and the actual beginning of the work of construction under such contract with such construction company or companies, and a written notice to the Government by the contractor, his representatives or assigns, accompanied by proofs of the execution of such contract.

ARTICLE XI.—*Contract binding on and in favor of representatives, assigns, etc.*

It is hereby mutually agreed by and between the parties hereto, on behalf of themselves and their respective successors, representatives, and assigns, that all terms and conditions herein contained upon the part of the Government to be observed, kept, or performed, shall be equally binding and obligatory as well upon the Hawaiian Government and the said party of the first part and his successors; and that all of the agreements and covenants herein contained upon the part of the contractor to be kept or observed or performed, are and shall be as well in favor of and enforceable by the Hawaiian Government and the party of the first part as his successors in office.

And further, that all of the terms and conditions and covenants herein contained upon the part of the contractor to be observed, kept, or performed shall be equally binding and obligatory upon the said party of the second part as upon his representatives and assigns; and that all of the agreements and covenants herein contained on the part of the Government, or of said party of the first part, or his successors, to be kept, observed, or performed, are, and shall be, as well in favor of and enforceable by the party of the second part as his representatives and assigns.

[Specifications of cables hereinbefore referred to. Proposed telegraph cable from San Francisco to Honolulu and Hawaiian interisland cables.]

SAN FRANCISCO-HONOLULU CABLE.

[The landing place near San Francisco may be at Monterey Bay, and the landing place near Honolulu at Waikiki.]

Lengths of cable required.

	Nautical miles.
Shore end (tpye A)	2
Intermediate No. 1 (type E)	3
Intermediate No. 2 (type B)	51
Deep sea (type D)	2,444
Total	2,500

SPECIFICATION.

Core.

(*a*) *Conductor.*—The conductor to be a strand of copper wires weighing 400 pounds per nautical mile, or within 5 per cent thereof, and the resistance at 75° Fahrenheit shall not be more than 3.117 ohms.

(*b*) *Insulator.*—The conductor is to be insulated with three coatings of gutta-percha of improved inductive capacity, prepared according to Mr. Willoughby Smith's system, alternating with three coatings of Chatterton's compound, and to weigh 300 pounds per knot, or within 5 per cent thereof. The resistance of the completed core to be not less than 150 megohms per nautical mile after one minute's electrification, when tested at a temperature of 75° Fahrenheit, after twenty-four hours' immersion in water, fourteen days after manufacture, and the average inductive capacity per nautical mile throughout the entire length is not to exceed 0.414 microfarad.

(*c*) *Sheathing.*—The core of types A, E, and B to be covered with Clifford's patent sheathing for protection against the ravages of insects.

(*d*) *Serving.*—The core of all the types to be served with a good and sufficient serving of jute yarn, steeped in cutch or other preservative mixture, and applied wet.

Outer coverings.—Shore end.

(*e*) *Outer coverings.—Type A.*—Type B to be served with tarred jute yarn, and again closed with fourteen galvanized BB iron wires, No. 1 B. W. G. equal to three hundred one-thousandths of an inch when galvanized, or within 2½ per cent thereof.

Intermediate, No. 1.

(*f*) *Type E.*—The served core to be covered with twelve galvanized BB iron wires, No. 4 B. W. G., equal to two hundred and thirty-eight one-thousandths of an inch when galvanized, or within 2½ per cent thereof.

Intermediate, No. 2.

(*g*) *Type B.*—The served core to be covered with twelve galvanized BB iron wires, No. 6 B. W. G., equal to two hundred one-thousandths of an inch when galvanized, or within 2½ per cent thereof.

Deep-sea.

(*h*) *Type D.*—The served core to be covered with seventeen galvanized steel wires, each wire being taped and compounded. The steel wires to be No. 14 B. W. G., equal to eighty-three one-thousandths of an inch when galvanized, or within 2½ per cent thereof, and to bear a breaking strain of not less than 85 tons per square inch, with an elongation of not less than 4 per cent.

(*i*) Before being used for the sheathing of types A, E, and B, the galvanized iron wire is to be heated in a kiln or oven just sufficiently to drive off all moisture, and while warm is to be dipped into a hot compound or black varnish.

Outside serving.

(*j*) Types A and E, manufactured as above, to be covered with two servings of jute yarn laid on spirally in opposite directions, alternately with two coatings of Clark's compound

(*k*) Types B and D, manufactured as above, to be covered with two of Johnson & Phillip's patent tapes, laid on spirally in opposite directions, alternately with two coatings of Clark's compound.

HAWAIIAN INTERISLAND CABLES.

Lengths of cable required.

	Nautical miles.
Shore end (Type A)	10
Intermediate (Type B[1])	25
Deep-sea (Type D)	142
Total	177

SPECIFICATION.

Core.

(*a*) *Conductor.*—The conductor to be a strand of copper wires weighing 100 pounds *per nautical* mile, or within 5 per cent thereof, and the resistance at 75° F. shall not *be more than* 12.22 ohms.

(*b*) *Insulator.*—The conductor is to be insulated with three coatings of gutta-

percha of improved inductive capacity, prepared according to Mr. Willoughby Smith's system, alternating with three coatings of Chatterton's compound, and to weigh 100 pounds per nautical mile, or within 5 per cent thereof. The resistance of the completed core is to be not less than 150 megohms per nautical mile after one minute's electrification when tested at a temperature of 75° Fahrenheit, after twenty-four hours' immersion in water, fourteen days after manufacture.

(*c*) *Sheathing.*—The core of Types A and B[1] to be covered with Clifford's patent sheathing for protection against the ravages of insects.

(*d*) *Serving.*—The core to be covered with a good and sufficient serving of jute yarn, steeped in cutch or other preservative mixture, to be applied wet.

Outer coverings.—Shore end.

(*e*) *Outer coverings.—Type A.*—Type B[1] to be served with tarred jute yarn, and again closed with twelve galvanized BB iron wires, No. 1 B. W. G., equal to three hundred one-thousandths of an inch when galvanized, or within 2½ per cent thereof.

Intermediate.

(*f*) Type B[1].—The served core to be covered with twelve galvanized BB iron wires, No. 9 B. W. G., equal to one hundred and forty-eighth one thousandths of an inch when galvanized, or within 2½ per cent thereof.

Deep sea.

(*g*) *Type D.*—The served core to be covered with fifteen galvanized homogeneous iron wires. The homogeneous wires to be No. 13 B. W. G., equal to ninety-nine one-thousandths of an inch when galvanized, or within 2½ per cent thereof, and to bear a breaking strain of not less than 52 tons per square inch with an elongation of not less than 3 per cent.

(*h*) *Dipping.*—Before being used for the sheathing the galvanized iron wire is to be heated in a kiln or oven just sufficiently to drive off all moisture, and while warm is to be dipped into a hot compound or black varnish.

Outside serving.

(*i*) *Outside serving.*—Type A to be covered with two servings of jute yarn laid on spirally in opposite directions, and two coatings of Clark's compound.

(*j*) Types B[1] and D to be covered with two of Johnson & Phillips's patent tapes, laid on spirally in opposite directions, alternately, with two coatings of Clark's compound.

GENERAL CLAUSES.

(*k*) *Cable to be kept under water.*—The cable when completed to be coiled in suitable water-tight tanks, and kept, as far as practicable, constantly under water.

(*l*) *Tanks on board ship.*—The completed cable to be coiled on board ship in water-tight tanks, and kept, as far as practicable, under water until submerged.

(*m*) *Final electrical condition of cable.*—The electrical condition of the cable when laid to be such as, having regard to its previous condition and making due allowance for the mean actual temperature of the water, as shown by the resistance of the conductor, to give no good grounds for believing that any fault exists in the insulator or conductor.

In witness whereof the said Sanford Ballard Dole, President of the Republic of Hawaii, hath hereunto set his hand and caused the great seal of the Republic of Hawaii to be hereunto attached; and Francis M. Hatch, minister of foreign affairs; Samuel M. Damon, minister of finance; James A. King, minister of interior; and William O. Smith, attorney-general, constituting the cabinet of the Republic of Hawaii, in token of their consent to and approval of this agreement, and the said Zephaniah Swift Spalding have hereunto set their hands and seals, the day and year first above written.

Done in triplicate.

[SEAL.]

SANFORD B. DOLE.
FRANCIS M. HATCH,
Minister of Foreign Affairs.
J. A. KING, *Minister of the Interior.*
S. M. DAMON, *Minister of Finance.*
WILLIAM O. SMITH, *Attorney-General.*
ZEPHANIAH SWIFT SPALDING.

We, William C. Wilder, president of the Senate of the Republic of Hawaii, and J. F. Clay, secretary of the Senate of the Republic of Hawaii, do hereby certify that the foregoing agreement between Sanford Ballard Dole, President of the Republic of Hawaii, and Zephaniah Swift Spalding was submitted by the President to the said Senate on the 12th day of August, A. D. 1895, and was ratified, approved, and confirmed by the said Senate on the 13th day of August, A. D. 1895.

W. C. WILDER,
President of the Senate of the Republic of Hawaii.

J. F. CLAY,
Secretary of the Senate of the Republic of Hawaii.

HONOLULU, *August 14, 1895.*

We, D. L. Naone, speaker, and James N. K. Keola, clerk of the House of Representatives of the Republic of Hawaii, do hereby certify that the foregoing agreement between Sanford Ballard Dole, President of the Republic of Hawaii, and Zephaniah Swift Spalding was submitted by the President to the said House of Representatives on the 12th day of August, A. D. 1895, and was ratified, approved, and confirmed by the said House of Representatives on the 13th day of August, A. D. 1895.

D. L. NAONE,
Speaker of the House of Representatives of the Republic of Hawaii.

JAS. N. K. KEOLA,
Clerk of the House of Representatives of the Republic of Hawaii.

HONOLULU, *August 14, A. D., 1895.*

CERTIFICATE OF INCORPORATION OF THE PACIFIC CABLE COMPANY.

This is to certify that we, the undersigned, do hereby associate ourselves into a company under and by virtue of the provisions of the acts of the legislature of the State of New Jersey, entitled "An act concerning corporations" (approved April 7, 1875), and the several supplements thereto and acts amendatory thereof, for the purposes hereinafter mentioned, and to that end we do, by this, our certificate, set forth—

First. That the name which we have assumed to designate such company and to be used in its business and dealings is the "Pacific Cable Company."

Second. That the places in this State where the business of the said company is to be conducted are the city of Jersey City, in the county of Hudson and State of New Jersey, and in such other townships and cities in this State as the nature and the progress of the business of the corporation shall from time to time render necessary or desirable.

The principal part of the business of said company within the State of New Jersey is to be transacted in the city of Jersey City, county of Hudson aforesaid.

The principal office or place of business of the said company outside the State of New Jersey is San Francisco, in the county of San Francisco and State of California.

The company will carry on a portion of its business without the State of New Jersey, and the places out of the State of New Jersey where

the same is to be conducted and where the company proposes to carry on operations are in the State of California and in the Hawaiian Islands, and in such other places in the several States and Territories of the United States and in such foreign countries as shall from time to time be found necessary and convenient for the purposes of the company's business.

Third. That the objects for which this company is formed are to do any or all of the things herein set forth to the same extent as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees, or otherwise, and either alone or in company with others, viz:

The construction, laying, operating, and maintaining of electric submarine cables in the Pacific Ocean, with telegraph lines and connections for the transmission of messages by electrical means, including the acquisition, by purchase, by manufacture, or otherwise, of all materials, supplies, machinery, and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof.

(*a*) To manufacture, purchase, or otherwise acquire, hold, own, mortgage, pledge, sell, assign, and transfer, invest, trade, deal in and deal with goods, wares, and merchandise, and property of every class and description.

(*b*) To the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey, or otherwise dispose of, without limit as to amount, within or without the State of New Jersey, real estate and real property of every class and description.

(*c*) To acquire the good will, rights, and property of any kind, and to undertake the whole or any part of the assets and liabilities of any person, firm, association, or corporation, and to pay for the same in cash, stock of this company, bonds, or otherwise.

(*d*) To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, introduce, and to sell, assign, or otherwise dispose of, any and all trade-marks, trade names, and distinctive marks, and all inventions, improvements, and processes used in connection with or secured under letters patent of the United States or elsewhere or otherwise;

And to use, exercise, develop, grant licenses in respect of, or otherwise turn to account, any such trade-marks, patents, licenses, concessions, processes, and the like, or any such property, rights, and information so acquired, and with a view to the working and development of the same to carry on any business, whether manufacturing or otherwise, which the company may think calculated directly or indirectly to effectuate these objects.

(*e*) To purchase or otherwise acquire, to hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of bonds, mortgages, debentures, obligations, or shares of the capital stock of any corporation, and to exercise while the owner thereof all the rights, powers, and privileges, including the right to vote thereon, which natural persons, being the owners of such stock and property, might, could, or would exercise.

(*f*) To draw, make, accept, indorse, discount, execute, and issue promissory notes, bills of exchange, warrants, bonds, debentures, and other negotiable or transferable instruments.

(*g*) To procure the company to be registered or recognized and to

carry on its operations and business in any State or Territory of the United States and in any foreign country or place.

To do all and everything necessary, suitable, or proper for the accomplishment of any of the purposes or attainment of any of the objects hereinbefore enumerated or which shall at any time appear conducive or expedient for the protection or benefit of the company as holders of or interested in any such properties mentioned or referred to herein or otherwise, and in general to engage in any and all lawful business whatever, necessary or convenient (excepting always from this charter the business of an insurance company, a banking company, a savings bank, or other corporation intended to derive profit from the loan and use of money, a railroad or other company which shall need to possess the right of taking and condemning lands in the State of New Jersey), with all the powers which are now or may hereafter be granted to corporations under the laws of the State of New Jersey.

It is the intention that the objects specified in the third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause or other paragraph in this charter, but that the objects specified in each of the clauses of this paragraph shall be regarded as independent objects.

Fourth. The portion of the business of the said company which is to be carried on without the State of New Jersey is a part of its financial business, any part or all of its purchasing, manufacturing, and selling business, any part or all of its dealings in personal or real property of all kinds and choses in action, any part or all of the negotiation, sale, and delivery of its stocks, bonds, and other securities, any part or all of its business pertaining to patents, patent rights, trade-marks, and any and all other parts of its business described in paragraph 3 herein which may be or become necessary or convenient or deemed profitable for the company.

Fifth. The total amount of the capital stock of this company is to be $1,000,000, and the number of shares into which it is to be divided is 10,000 shares of $100 each.

Sixth. The amount of capital with which said company will commence business is $1,000,000, which is divided into 10,000 shares of $100 each.

Seventh. The names and addresses of the stockholders and the number of shares of stock held by each are as follows:

Name.	Residence.	Number of shares.
Abram S. Hewitt	New York City	1,500
D. O. Mills	do	1,000
G. M. Dodge	do	1,000
Fred. D. Grant	do	500
Wager Swayne	do	500
Jas. J. Hill	St. Paul, Minn	1,000
Z. S. Spalding	San Francisco, Cal	2,500
Jno. H. Browning	Tenafly, N. J	1,000
Mason W. Tyler	Plainfield, N. J	1,000

Eighth. The period at which said company shall commence is the 1st day of January, 1896, and the period at which it shall terminate shall be fifty years thereafter.

Ninth. (1) The board of directors shall have full and unrestricted power without the assent or vote of the stockholders to authorize and

cause to be executed mortgages and liens upon the real and personal property of this company, upon such terms and conditions as shall to the board seem proper, and upon like terms and conditions to sell, in the usual course of business, property both real and personal.

With the consent in writing and pursuant to vote of the holders of a majority of the stock issued and outstanding, the stockholders having been formally convened in a meeting, the directors shall have power and authority to sell, assign, transfer, mortgage, or otherwise dispose of the whole property of this corporation, or any part or portion thereof, on such terms and conditions as the directors shall deem fit, right, and just.

(2) The board of directors, in addition to the powers and authorities by statute and by the by-laws expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of the statute, of the charter, and to any regulations that may from time to time be made by the stockholders, provided, that no regulations so made shall invalidate any provisions of this charter, or any prior acts of the directors which would have been valid if such regulations had not been made.

(3) The company may in its by-laws confer powers additional to the foregoing upon the directors and may prescribe the number necessary to constitute a quorum of its board of directors, which number may be less than a majority of the whole number.

(4) The board of directors may, by resolution passed by a majority of the whole board, designate two or more of their number to constitute an executive committee, which committee shall for the time being, as provided in said resolution or in the by-laws of said company, have and exercise all the powers of the board of directors in the management of the business and affairs of the company, and have power to authorize the seal of the company to be affixed to all papers which may require it.

(5) No stockholder holding less than 10 per cent of the total stock issued shall be entitled to an examination of the books of account, or documents, or papers, or vouchers of this company, except by a resolution of the board of directors giving such privilege, and an examination shall then be had only at the time and place, in the manner, to the extent, and by the person named in such resolution of the board of directors, excepting from this entire restriction only such corporate records as are, by statute, open to the inspection of stockholders.

This restriction shall not be construed to limit the right or power of any director or officer of the corporation to examine the books, papers, or vouchers of the said corporation

(6) The company may use and apply its surplus property earnings or accumulated profits, authorized by law to be reserved to the creation and maintenance of a surplus fund, or to the purchase and acquisition of property, and to the purchase and acquisition of its own capital stock, and may take the same in payment or satisfaction of any debt due the company from time to time, and to such extent and in such manner and upon such terms as its board of directors shall determine; and neither the surplus fund nor the property nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due the company, shall be regarded as profits for the purpose of the declaration or payment of dividends unless a majority of the board of directors, or a majority of all the stock then issued and outstanding, shall otherwise determine.

In witness whereof we have hereunto set our hands and seals this 13th day of December, A. D. 1895.

ABRAM S. HEWITT.	[SEAL.]
D. O. MILLS.	[SEAL.]
G. M. DODGE.	[SEAL.]
FRED. D. GRANT.	[SEAL.]
WAGER SWAYNE.	[SEAL.]
JAS. J. HILL.	[SEAL.]
Z. S. SPALDING.	[SEAL.]
MASON W. TYLER.	[SEAL.]
JNO. H. BROWNING.	[SEAL.]

In presence of—
JOSEPH B. BRAMAN.

Swayne & Swayne, counsel, 120 Broadway, New York City.

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered that on this 13th day of December, A. D. 1895, before me, Joseph B. Braman, a commissioner of deeds for the State of New Jersey, in and for the State of New York, resident in said city of New York, personally appeared Abram S. Hewitt, D. O. Mills, G. M. Dodge, Frederick D. Grant, Wager Swayne, James J. Hill, Z. S. Spalding, Mason W. Tyler, and Jno. H. Browning, who, I am satisfied, are the persons named in and who executed the foregoing certificate, and I, having first made known to them, and each of them, the contents thereof, they did each acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL.] JOSEPH B. BRAMAN,
Commissioner of Deeds for the State of New Jersey in and for the State of New York, resident in said City of New York.

Offices: Equitable Building, 120 Broadway, New York City. Branch and residence, 1274 Broadway, New York City.

(Indorsed:) Received in the Hudson County (N. J.) clerk's office, December 14, A. D. 1895, and recorded in clerk's record, No. ——, on page —.

JOHN G. FISHER, *Clerk.*

(Indorsed:) Filed December 16, 1895.

HENRY C. KELSEY,
Secretary of State.

STATE OF NEW JERSEY, *Department of State:*

I, Henry C. Kelsey, secretary of state of the State of New Jersey, do hereby certify that the foregoing is a true copy of the certificate of organization of the Pacific Cable Company and the indorsements thereon, as the same is taken from and compared with the original filed in my office on the 16th day of December, A. D. 1895, and now remaining on file therein.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Trenton, this 16th day of December, A. D. 1895.

HENRY C. KELSEY,
Secretary of State.

CERTIFICATE OF INCORPORATION OF THE PACIFIC CABLE COMPANY.

This is to certify that we, the undersigned, do hereby associate ourselves into a company under and by virtue of the provisions of the acts of the legislature of the State of New Jersey, entitled "An act concerning corporations," approved April 7, 1875, and the several supplements thereto and acts amendatory thereof, for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

First. That the name which we have assumed to designate such company and to be used in its business and dealings is the Pacific Cable Company.

Second. That the places in this State where the business of the said company is to be conducted are the city of Jersey City, in the county of Hudson and State of New Jersey, and in such other townships and cities in this State as the nature and the progress of the business of the corporation shall from time to time render necessary or desirable.

The principal part of the business of said company within the State of New Jersey is to be transacted in the city of Jersey City, county of Hudson aforesaid.

The principal office or place of business of the said company outside the State of New Jersey is San Francisco, in the county of San Francisco and State of California.

The company will carry on a portion of its business without the State of New Jersey, and the places out of the State of New Jersey where the same is to be conducted and where the company proposes to carry on operations are in the State of California and in the Hawaiian Islands, and in such other places in the several States and Territories of the United States and in such foreign countries as shall from time to time be found necessary and convenient for the purposes of the company's business.

Third. That the objects for which this company is formed are to do any or all of the things herein set forth to the same extent as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees, or otherwise, and either alone or in company with others, viz:

The construction, laying, operating, and maintaining of electric submarine cables in the Pacific Ocean, with telegraph lines and connections for the transmission of messages by electrical means, including the acquisition by purchase, by manufacture, or otherwise of all materials, supplies, machinery, and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof.

(*a*) To manufacture, purchase, or otherwise acquire, hold, own, mortgage, pledge, sell, assign, and transfer, invest, trade, deal in and deal with goods, wares, and merchandise, and property of every class and description.

(*b*) To the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey, or otherwise dispose of, without limit as to amount, within or without the State of New Jersey, real estate and real property of every class and description.

(*c*) To acquire the good will, rights, and property of any kind, and to undertake the whole or any part of the assets and liabilities of any per-

son, firm, association, or corporation, and to pay for the same in cash, stock of this company, bonds, or otherwise.

(*d*) To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, introduce, and to sell, assign, or otherwise dispose of any and all trade-marks, trade names, and distinctive marks, and all inventions, improvements, and processes used in connection with or secured under letters patent of the United States or elsewhere, or otherwise.

And to use, exercise, develop, grant licenses in respect of, or otherwise turn to account, any such trade marks, patents, licenses, concessions, processes and the like, or any such property, rights, and information so acquired, and with a view to the working and development of the same to carry on any business, whether manufacturing or otherwise, which the company may think calculated, directly or indirectly, to effectuate these objects.

(*e*) To purchase, or otherwise acquire, to hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of bonds, mortgages, debentures, obligations, or shares of the capital stock of any corporation, and to exercise while the owner thereof all the rights, powers, and privileges, including the right to vote thereon, which natural persons, being the owners of such stock and property, might, could, or would exercise.

(*f*) To draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, warrants, bonds, debentures, and other negotiable or transferable instruments.

(*g*) To procure the company to be registered or recognized, and to carry on its operations and business in any State or Territory of the United States, and in any foreign country or place.

To do all and everything necessary, suitable, or proper for the accomplishment of any of the purposes or attainment of any of the objects hereinbefore enumerated, or which shall at any time appear conducive or expedient for the protection or benefit of the company as holders of, or interested in, any such properties mentioned or referred to herein or otherwise, and in general to engage in any and all lawful business whatever, necessary or convenient (excepting, always, from this charter the business of an insurance company, a banking company, a savings bank, or other corporation intended to derive profit from the loan and use of money, a railroad or other company which shall need to possess the right of taking and condemning lands in the State of New Jersey), with all the powers which are now, or may hereafter be, granted to corporations under the laws of the State of New Jersey.

It is the intention that the objects specified in the third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause or other paragraph in this charter, but that the objects specified in each of the clauses of this paragraph shall be regarded as independent objects.

Fourth. The portion of the business of the said company which is to be carried on without the State of New Jersey is a part of its financial business, any part or all of its purchasing, manufacturing, and selling business, any part or all of its dealings in personal or real property of all kinds and choses in action, any part or all of the negotiation, sale, and delivery of its stocks, bonds, and other securities, any part or all of its business pertaining to patents, patent rights, trade marks, and any and all other parts of its business described in paragraph third herein which may be or become necessary or convenient, or deemed profitable for the company.

Fifth. The total amount of the capital stock of this company is to be one million dollars ($1,000,000), and the number of shares into which it is to be divided is ten thousand (10,000) shares of one hundred dollars ($100) each.

Sixth. The amount of capital with which said company will commence business is one million dollars ($1,000,000), which is divided into ten thousand (10,000) shares of one hundred dollars ($100) each.

Seventh. The names and addresses of the stockholders and the number of shares of stock held by each are as follows:

Name.	Residence.	Number of shares.
Abram S. Hewitt	New York City	1,500
D. O. Mills	do	1,000
G. M. Dodge	do	1,000
Fred. D. Grant	do	500
Wager Swayne	do	500
Jas. J. Hill	St. Paul, Minn	1,000
Z. S. Spalding	San Francisco, Cal	2,500
Jno. H. Browning	Tenafly, N. J	1,000
Mason W. Tyler	Plainfield, N. J	1,000

Eighth. The period at which said company shall commence is the first day of January, 1896, and the period at which it shall terminate shall be fifty years thereafter.

Ninth. 1. The board of directors shall have full and unrestricted power, without the assent or vote of the stockholders, to authorize and cause to be executed mortgages and liens upon the real and personal property of this company, upon such terms and conditions as shall to the board seem proper, and upon like terms and conditions, to sell, in the usual course of business, property both real and personal.

With the consent in writing and pursuant to vote of the holders of a majority of the stock issued and outstanding, the stockholders having been formally convened in a meeting, the directors shall have power and authority to sell, assign, transfer, mortgage, or otherwise dispose of the whole property of this corporation, or any part or portion thereof, on such terms and conditions as the directors shall deem fit, right, and just.

2. The board of directors, in addition to the powers and authorities by statute and by the by-laws expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the corporation, but subject, nevertheless, to the provisions of the statute, of the charter, and to any regulations that may from time to time be made by the stockholders, provided that no regulations so made shall invalidate any provisions of this charter, or any prior acts of the directors which would have been valid if such regulations had not been made.

3. The company may in its by-laws confer powers additional to the foregoing upon the directors, and may prescribe the number necessary to constitute a quorum of its board of directors, which number may be less than a majority of the whole number.

4. The board of directors may, by resolution, passed by a majority of the whole board, designate two or more of their number to constitute an executive committee, which committee shall for the time being, as provided in said resolution or in the by-laws of said company, have and exercise all the powers of the board of directors in the management of the business and affairs of the company, and have power to author-

ize the seal of the company to be affixed to all papers which may require it.

5. No stockholder holding less than ten per cent of the total stock issued shall be entitled to an examination of the books of account, or documents, or papers or vouchers of this company, except by a resolution of the board of directors giving such privilege, and an examination shall then be had only at the time and place, in the manner, to the extent, and by the person named in such resolution of the board of directors, excepting from this entire restriction only such corporate records as are, by statute, open to the inspection of stockholders.

This restriction shall not be construed to limit the right of power of any director or officer of the corporation to examine the books, papers, or vouchers of the said corporation.

6. The company may use and apply its surplus property earnings or accumulated profits, authorized by law to be reserved to the creation and maintenance of a surplus fund, or to the purchase and acquisition of property, and to the purchase and acquisition of its own capital stock, and may take the same in payment or satisfaction of any debt due the company from time to time, and to such extent and in such manner and upon such terms as its board of directors shall determine, and neither the surplus fund, nor the proper nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due the company shall be regarded as profits for the purpose of the declaration or payment of dividends unless a majority of the board of directors, or a majority of all the stock then issued and outstanding, shall otherwise determine.

In witness whereof we have hereunto set our hands and seals this thirteenth day of December, A. D. 1895.

ABRAM S. HEWITT.	[SEAL.]
D. O. MILLS.	[SEAL.]
G. M. DODGE.	[SEAL.]
FREDERICK D. GRANT.	[SEAL.]
WAGER SWAYNE.	[SEAL.]
JAS. J. HILL.	[SEAL.]
Z. S. SPALDING.	[SEAL.]
MASON W. TYLER.	[SEAL.]
JNO. H. BROWNING.	[SEAL.]

In presence of—
JOSEPH B. BRAMAN.

SWAYNE & SWAYNE,
Counsel, No. 120 Broadway, New York City.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this thirteenth day of December, A. D. eighteen hundred and ninety-five, before me, Joseph B. Braman, a commissioner of deeds for the State of New Jersey, in and for the State of New York, resident in said city of New York, personally appeared Abram S. Hewitt, D. O. Mills, G. M. Dodge, Frederick D. Grant, Wager Swayne, James J. Hill, Z. S. Spalding, Mason W. Tyler, and Jno. H. Browning, who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them and each of them the contents thereof, they did each acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL.] JOSEPH B. BRAMAN,
Commissioner of Deeds for the State of New Jersey
In and for the State of New York, Resident in said City of New York.

Offices: Equitable Building, 120; branch and residence, 1274 Broadway, N. Y. City.

Endorsed: "Received in the Hudson County, N. J., clerk's office. Dec. 14th, A. D. 1895, and recorded in Clerk's Record No. ——, on page —. John G. Fisher, clerk."

Endorsed: "Filed Dec. 16, 1895. Henry C. Kelsey, secretary of state."

STATE OF NEW JERSEY,
Department of State:

I, Henry C. Kelsey, secretary of state of the State of New Jersey, do hereby certify that the foregoing is a true copy of the certificate of organization of the Pacific Cable Company and the indorsements thereon, as the same is taken from and compared with the original filed in my office on the sixteenth day of December, A. D. 1895, and now remaining on file therein.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Trenton, this sixteenth day of December, A. D. 1895.

[SEAL.] HENRY C. KELSEY,
Secretary of State.

CERTIFICATE OF INCORPORATION OF THE PACIFIC CABLE COMPANY.

STATE OF NEW YORK,
City and county of New York, ss:

We, the undersigned, desiring to form a corporation for the purpose of constructing, owning, using, and maintaining a line of electric telegraph, partly beyond the limits of this State, pursuant to the provisions of the transportation corporations law, being all of full age, citizens of the United States, and a majority of whom are residents of the State of New York, do hereby certify:

1. The name of the proposed corporation is the "Pacific Cable Company."
2. The general route and the points to be connected are, starting from the city of New York and thence by its own, or using the lines of other telegraph companies, across the United States to the State of California; thence under the waters of the Pacific Ocean to Japan, touching one or more of the islands of the Hawaiian group and other islands in the Pacific on the way; thence from the coast of Japan to one or more ports upon the continent of Asia or upon islands adjacent thereto, with a line or lines extending from one or more of said islands in the Pacific Ocean at which it shall touch to one or more of the islands of Australasia.
3. The amount of its capital stock is one hundred thousand dollars.
4. The number of shares into which the capital stock is to be divided is one thousand shares of the par value of one hundred dollars per share.
5. The term of its existence is to be one hundred years.
6. The number of its directors is seven.

7. The names and residences of the directors for the first year are:

Name.	Residence.
Edmund L. Baylies	20 W. 36th st., New York City.
Herman S. Le Roy	28 Seventh avenue, New York City.
Charles D. Wetmore	135 Madison ave., New York City.
George A. Miller	Montclair, New Jersey.
James M. Robertson	101 West 85th st., New York City.
William H. T. Hughes	181 West 75th st., New York City.
Frederick H. Allen	Pelham Manor, New York.

8. The post-office addresses of the subscribers and the number of shares which each agrees to take in such corporation are as follows:

Name.	Post-office address.	No. of shares subscribed.
Edmund L. Baylies	54 Wall st., New York City	994
Herman S. Le Roy	28 Seventh av., New York City	One
Charles D. Wetmore	54 Wall st., New York City	One
George A. Miller	54 Wall st., New York City	One
James M. Robertson	37 Wall st., New York City	One
William H. T. Hughes	56 Pine st., New York City	One
Frederick H. Allen	59 Wall st., New York City	One

In witness whereof we have executed this certificate in duplicate this ninth day of December, 1895.

EDMUND L. BAYLIES.
HERMAN S. LE ROY.
CHARLES D. WETMORE.
GEORGE A. MILLER.
JAMES M. ROBERTSON.
WILLIAM H. T. HUGHES.
FREDERICK H. ALLEN.

STATE OF NEW YORK,
City and County of New York, ss:

On this 9th day of December, in the year one thousand eight hundred and ninety-five, before me personally came Edmund L. Baylies, Herman S. Le Roy, Charles D. Wetmore, George A. Miller, James M. Robertson, William H. T. Hughes, and Frederick H. Allen, to me severally personally known, and known to me to be the seven individuals described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same.

WALTER F. TAYLOR,
Notary Public, New York County.

STATE OF NEW YORK,
City and County of New York, ss:

I, Henry D. Purroy, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Walter F. Taylor, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And further,

that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 9 day of Dec., 1895.

[SEAL.] HENRY D. PURROY, *Clerk.*

(Endorsed:) Pacific Cable Company. Certificate of incorporation. Tax for privilege of organization of this corporation, $125.00; under chapter 143, law of 1886; paid to State treasurer before filing. State of New York, office of secretary of state, filed and recorded Dec. 10, 1895. Andrew Davidson, deputy secretary of state.

STATE OF NEW YORK,
Office of the Secretary of State, ss:

I have compared the preceding with the original certificate of incorporation of Pacific Cable Company filed and recorded in this office on the tenth day of December, 1895, and do hereby certify the same to be a correct transcript therefrom and of the whole of said original.

Witness my hand and the seal of office of the secretary of state, at the city of Albany, this 21st day of February, one thousand eight hundred and ninety-six.

[SEAL.] ANDREW DAVIDSON,
Deputy Secretary of State.

The transportation corporations law in the State of New York, being chapter 566 of the laws of 1890, as amended by chapter 617 of the laws of 1892, entitled "An act in relation to transportation corporations, excepting railroads," constituting chapter 40 of the general laws.

ARTICLE VIII.

Telegraph and telephone companies.

Section 100. Incorporation.
101. Extension of lines.
102. Construction of lines.
103. Transmission of dispatches.
104. Consolidation of corporations.
105. Special policemen.

SECTION 100.—*Incorporation.*—Seven or more persons may become a corporation for the purpose of constructing, owning, using, and maintaining a line or lines of electric telegraph or telephone, wholly within or partly beyond the limits of this State, or for the purpose of owning any interest in any such line or lines, or any grants therefor, by executing, acknowledging, and filing a certificate, stating the name of the corporation; its general route and the points to be connected; its capital stock; the number of shares into which it is to be divided; the term of its existence; the number of its directors, not less than seven; the names and residence of the directors for the first year, and the post-office address of the subscribers, and the number of shares which each agrees to take in such corporation.

SECTION 101.—*Extension of lines.* Any such corporation may construct, own, use, and maintain any line of electric telegraph or telephone, not described in its *original* certificate of incorporation, whether wholly

within or wholly or partly beyond the limits of this State, and may join with any other corporation in constructing, leasing, owning, using, and maintaining such line, or hold, or own any interest therein, or become lessees thereof upon filing in the same manner as the original certificate is required to be filed, an amended certificate, executed and acknowledged by at least two-thirds of the directors of such corporation, describing the general route of such line or lines, and designating the extreme points connected thereby, and upon procuring the written consent of the persons owning at least two-thirds of the capital stock of such corporation, and such amended certificate shall not be filed until there is indorsed thereon or annexed thereto an affidavit made by at least three of the directors of the corporation that such consent has been obtained, which affidavit shall be filed with and be a part of such certificate.

SECTION 102.—*Construction of lines.* Such corporation may erect, construct, and maintain the necessary fixtures for its lines upon, over, or under any of the public roads, streets, and highways, and through, across, or under any of the waters within the limits of this State, and upon, through, or over any other land subject to the right of the owners thereof to full compensation for the same. If any such corporation can not agree with the owner or owners upon the compensation to be paid therefor, such compensation shall be ascertained in the manner provided in the condemnation law.

SECTION 103.—*Transmission of despatches.* Every such corporation shall receive despatches from and for other telegraph or telephone lines or corporations, and from and for any individual, and on payment of the usual charges by individuals for transmitting despatches as established by the rules and regulations of such corporation, transmit the same with impartiality and good faith and in the order in which they are received, and if it neglects or refuses so to do it shall pay one hundred dollars for every such refusal or neglect to the person or persons sending or desiring to send any such despatch and entitled to have the same so transmitted, but arrangements may be made with the proprietors or publishers of newspapers for the transmission for publication of intelligence of general and public interest out of its regular order.

SECTION 104.—*Consolidation of corporations.* Any corporation organized under this article may lease, sell, or convey its property rights, privileges, and franchises, or any interest therein or any part thereof to any telegraph or telephone corporation organized under or created by the laws of this or any other State, and may acquire by purchase, lease, or conveyance the property rights, privileges, and franchises, or any interest therein or part thereof of any such corporation, and may make payments therefor in its own stock, money, or property, or receive payment therefor in the stock, money, or property of the corporation to which the same may be sold, leased, or conveyed; but no such lease, sale, purchase, or conveyance shall be valid until it shall have been ratified and approved by a three-fifths vote of its board of directors or trustees and by the vote or written consent of stockholders owning at least three-fifths of the capital stock given at a meeting of all the stockholders duly called for that purpose.

NOTE.—Section 105, the only remaining section of this article, relates only to special policemen who may be designated by a corporation operating a system of signalling by telegraph to a central office by police assistance.

CERTIFICATE INCREASING CAPITAL STOCK OF PACIFIC CABLE COMPANY.

STATE OF NEW YORK,
City and County of New York, ss:

We, James A. Scrymser, chairman, and James M. Robertson, secretary, of a special meeting of the stockholders of the Pacific Cable Company, held for the purpose of increasing its capital stock, do hereby certify that the Pacific Cable Company is a stock corporation, formed under the laws of the State of New York, and that the capital stock of said corporation was fixed, by its certificate of incorporation, at one hundred thousand dollars, and was divided into one thousand shares of the par value of one hundred dollars each. That said company, desiring to increase its capital stock, the directors thereof did publish a notice, signed by a majority of them, in a newspaper published in the county of New York, the county in which the principal business office of said corporation is situated, once a week for at least two successive weeks prior to the date of the meeting called thereby, which said notice was as follows:

NOTICE OF MEETING TO INCREASE CAPITAL STOCK OF THE PACIFIC CABLE COMPANY.

We, the undersigned, being a majority of the directors of the Pacific Cable Company, do hereby give notice that a special meeting of the stockholders of said company will be held at the office of said Company, No. 37 Wall street, in the city of New York, on Wednesday the 19th day of February, 1896, at twelve o'clock noon, for the purpose of voting upon the proposition to increase the capital stock of said company from the present amount thereof, namely, the sum of one hundred thousand dollars, consisting of one thousand shares of the par value of one hundred dollars each, to the amount of ten millions dollars, to consist of one hundred thousand shares of the par value of one hundred dollars per share.

New York, January 22, 1896.

JAMES A. SCRYMSER.
J. KENNEDY TOD.
EDMUND L. BAYLIES.
J. PIERPONT MORGAN.
G. S. BOWDOIN.

That at least three weeks before said meeting a copy of said notice, enclosed in a postpaid wrapper, was mailed to each stockholder at his last known post-office address. That at the time and place specified in the notice published and mailed as aforesaid, there appeared in person or by proxy stockholders representing more than a majority of the shares of stock of the said company, and that the meeting organized by choosing from among their number the said James A. Scrymser as chairman and the said James M. Robertson as secretary thereof. That the notice of the meeting having been read, and proof of the proper publishing and mailing thereof having been presented, the following resolution was proposed:

Resolved, That the Pacific Cable Company does increase its capital stock from the present amount thereof, namely, one hundred thousand dollars, consisting of one thousand shares of the par value of one hun-

dred dollars each, to the amount of ten million dollars, to consist of one hundred thousand shares of the par value of one hundred dollars each.

That the vote of those present in person or by proxy being duly canvassed, it appeared that 996 shares of the capital stock of said company, being more than a majority of all the stock thereof, voted in favor of said resolution, which was thereupon declared carried.

And we do further certify that the amount of the capital of said corporation actually paid in is nothing, no call, as yet, having been issued by the directors of said corporation to the subscribers of the stock thereof, and that the whole amount of the debts and liabilities of the said corporation is nothing, and that the amount to which the capital stock of said corporation is increased is ten million dollars.

In witness whereof we have made and signed this certificate in duplicate this 19th day of February, 1896.

JAMES A. SCRYMSER, *Chairman.*
JAMES M. ROBERTSON, *Secretary.*

STATE OF NEW YORK,
City and County of New York, ss:

James A. Scrymser, chairman, and James M. Robertson, secretary, being the individuals above named, being severally duly sworn, each for himself, deposes and says that he has read the foregoing certificate subscribed by him, and that the same is in all respects true.

JAMES A. SCRYMSER, *Chairman.*
JAMES M. ROBERTSON, *Secretary.*

Sworn to before me this 20th day of February, 1896.

WALTER F. TAYLOR,
Notary Public, New York County.

STATE OF NEW YORK,
City and County of New York, ss:

On this twentieth day of February, 1896, before me personally came James A. Scrymser and James M. Robertson, the two persons described in and who executed the foregoing certificate, and they severally acknowledged to me that they executed the same.

WALTER F. TAYLOR,
Notary Public, New York County.

STATE OF NEW YORK,
City and County of New York, ss:

I, Henry D. Purroy, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Walter F. Taylor, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county the 20th day of February, 1896.

[SEAL.] HENRY D. PURROY, *Clerk.*

STATE OF NEW YORK,
Office of the Secretary of State, ss:

I have compared the preceding with the original certificate to increase the capital stock of Pacific Cable Company, filed and recorded in this office on the 21st day of February, 1896, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the secretary of state, at the city of Albany, this 21st day of February, one thousand eight hundred and ninety-six.

[SEAL.] ANDREW DAVIDSON,
Deputy Secretary of State.

(Endorsed:) Pacific Cable Company. Certificate as to increase of capital stock. Tax for privilege of increase of capital of this corporation, $12,375.00. Under chapter 143, laws of 1886. Paid to state treasurer before filing. State of New York, office of secretary of state. Filed and recorded Feb. 21, 1896. Andrew Davidson, deputy secretary of state.

LETTER FROM JAMES A. SCRYMSER, PRESIDENT, EDMUND L. BAYLIES, VICE-PRESIDENT, "PACIFIC CABLE COMPANY" TO HON. JOHN SHERMAN, CHAIRMAN COMMITTEE ON FOREIGN RELATIONS.

WASHINGTON, D. C., *February 18, 1896.*

Hon. JOHN SHERMAN,
Chairman Committee on Foreign Relations, United States Senate.

DEAR SIR: In compliance with your request, we desire to embody in this communication the suggestions which we made to you this morning in reference to a cable in the Pacific Ocean between the United States, the Hawaiian Islands, and China and Japan.

We represent the Pacific Cable Company, organized under the laws of the State of New York with a capital of $10,000,000. President, James A. Scrymser; vice-president, Edmund L. Baylies; directors, G. S. Bowdoin, Edmund L. Baylies, J. Pierpont Morgan, J. Kennedy Tod, James A. Scrymser, office 37 Wall street, New York.

This company has prepared and submitted a bill in the House of Representatives and the United States Senate, which has been referred in the House to the Committee on Interstate and Foreign Commerce, and in the Senate to the committee of which you are chairman.

It will be noted that this company proposes to establish a cable, not merely to the Hawaiian Islands, but to China and Japan, which will necessitate the laying of 7,850 miles of submarine cable at an estimated cost of $7,500,000.

In order to carry out successfully a telegraphic-cable scheme of this magnitude, it is deemed necessary to contract with the Governments interested, and for that purpose this company has opened negotiations in Japan and elsewhere, and now asks from the United States Congress a contract whereby the company, in consideration of a payment of $160,000 a year, for twenty years, will transmit over its cable, free of cost, in perpetuity, all official telegrams of the United States Government between the United States and the countries named.

Regarding the cable connection between the United States and Hawaii, this company is willing to undertake to establish its cable within *eighteen months from* the date of the contract, and to establish

cable communication with China and Japan within eighteen months thereafter, and is willing to deposit with the United States Government bonds to the amount of $100,000 as a guaranty of good faith.

The only obstacle to the early and successful establishment of this cable is the so-called exclusive right granted by the Hawaiian Government to Colonel Spalding. In the Congressional Record of January 16, 1896, you will find a copy of this so-called exclusive right, an examination of which will show that it can only become exclusive through the action of the United States Government; for it is distinctly therein provided that if the United States Government does not give substantial assistance to the proposed monopoly for the Hawaiian cable, the Hawaiian Government can cancel the contract on sixty days' notice.

We therefore again direct attention to the fact that the monopoly proposed by the Hawaiian Government is dependent upon the action of the United States Government in giving substantial assistance to make it so.

In this connection we would especially mention the proposal of Colonel Spalding, that he shall receive from the United States Government a subsidy of $160,000 a year for twenty years for the cable between the Hawaiian Islands and the United States only. The proposal of the company we represent is for a cable to China and Japan for the same amount.

You are probably aware that at present all messages for China and Japan are routed exclusively via Lisbon, or via Northern Russia; and that the rate on a message from New York to Japan is $2.86 a word, and to China $1.96 a word.

The point we wish to make most distinctly is that if the United States Government subsidizes this Spalding Hawaiian cable and thereby creates a monopoly, no other company can expect any assistance from the United States Government for establishing a cable that would reach China and Japan. Consequently, the United States Government, in granting a subsidy to the Spalding Hawaiian cable, is indirectly perpetuating an existing monopoly of cable communication with China and Japan which it is the object of this company we represent to destroy; for you will observe that we have named in our bill a through rate from San Francisco to China and Japan of $1.25 a word.

In the Spalding bill as first introduced you will observe that the rate from the United States to the Hawaiian Islands was to be $1 a word, and to China and Japan a proportionate rate. As the length of the Hawaiian cable is less than one-third of the total distance to Japan, the rate proposed would be $3 a word, which is exorbitant.

In fact, as commerce is transacted to-day, no cable rate exceeding $1 a word should be charged. Every commercial transaction begins with a cable message and ends with a cable message; and it is a well-known fact that merchants, in opening a negotiation, first estimate what the cable company is going to charge before they can ascertain their own profits in the transaction.

We beg to submit herewith a copy of a letter addressed to Mr. Abram S. Hewitt, and to which we regret that we have not yet received a reply. However, it contains an absolutely correct statement as made by Mr. Hewitt, to both of the undersigned; and if Mr. Hewitt does not reply it will be for reasons best known to himself.

We submit this letter as a proof of our statement as above, that there is a strong English influence behind the Spalding scheme, and that the United States is expected to make a contribution to a monopoly enjoyed by foreign companies in China and Japan, of which Sir John Pender is chairman.

As suggested by Senator Frye, in the oral argument before the subcommittee on our bill, the fact that our company does not now hold a grant of landing rights from Hawaii can make no possible difference, for the Hawaiian Government, in its eagerness to obtain cable communication with the United States, will undoubtedly grant landing rights to any company which receives the support of the United States Government, and, as we have shown above, is entirely free to make such a grant upon 60 days' notice.

Very truly, yours,

——— ———,
President of Pacific Cable Company.

——— ———,
Vice-President of Pacific Cable Company.

P. S.—Upon further consideration of the question, and in view of the fact that we have proposed to carry messages between the United States and China and Japan at the rate of $1.25 per word, we are willing to modify the proposed rate to the Hawaiian Islands so that the same shall be 35 cents per word, instead of 75 cents per word. This will carry out the idea of making the rate charged correspond with the mileage over which the messages are carried.

JAMES A. SCRYMSER,
President of Pacific Cable Company.

EDMUND L. BAYLIES,
Vice-President of Pacific Cable Company.

NEW YORK, *February 15, 1896.*

Hon. ABRAM S. HEWITT.

MY DEAR SIR: I herewith submit the substance of our conversation of yesterday, as I understand it, relative to your explanation of the connection of Sir John Pender and of yourself with the Pacific Cable Company of New Jersey:

First. That Colonel Spalding, while in England, made a conditional contract with the construction company for the manufacture of a cable to be laid between San Francisco and Honolulu.

Second. That when Colonel Spalding returned to New York he brought with him a letter from Sir John Pender to yourself asking you to organize an American company for establishing and maintaining such a cable, and that you thereupon saw a number of your friends and invited them to become incorporators in such a company and subscribers to its stock, your understanding with Sir John Pender being that so far as your own subscription of 1,500 shares was concerned, he, Sir John Pender, would guarantee you against loss in respect thereto.

Third. That in accordance with Sir John Pender's request you went ahead and organized the Pacific Cable Company under the laws of the State of New Jersey.

You will, of course, understand that my object in submitting this is to avoid any further misunderstanding in the matter.

Very sincerely, yours,

EDMUND L. BAYLIES.

CORRESPONDENCE BETWEEN EDMUND L. BAYLIES, ESQ., VICE PRESIDENT PACIFIC CABLE COMPANY, AND HON. ABRAM S. HEWITT, IN REFERENCE TO SIR JOHN PENDER'S CONNECTION WITH THE PACIFIC CABLE COMPANY, OF NEW JERSEY.

The following correspondence has taken place between Mr. Baylies, vice-president of the Pacific Cable Company, and the Hon. Abram S. Hewitt, in reference to Sir John Pender's connection with the Pacific Cable Company of New Jersey:

NEW YORK, *February 15, 1896.*

HON. ABRAM S. HEWITT:

MY DEAR SIR: I herewith submit the substance of our conversation of yesterday, as I understood it, relative to your explanation of the connection of Sir John Pender and of yourself with the Pacific Cable Company of New Jersey.

First. That Colonel Spalding, while in England, made a conditional contract with the Construction Company for the manufacture of a cable to be laid between San Francisco and Honolulu.

Second. That when Colonel Spalding returned to New York he brought with him a letter from Sir John Pender to yourself asking you to organize an American company for establishing and maintaining such a cable, and that you thereupon saw a number of your friends and invited them to become incorporators in such a company and subscribers to its stock, your understanding with Sir John Pender being that so far as your own subscription of 1,500 shares was concerned, he, Sir John Pender, would guarantee you against loss in respect thereto.

Third. That in accordance with Sir John Pender's request you went ahead and organized the Pacific Cable Company under the laws of the State of New Jersey.

You will, of course, understand that my object in submitting this is to avoid any further misunderstanding in the matter.

Very sincerely, yours,

EDMUND L. BAYLIES.

In reply to the above letter the following letter was received by Mr. Baylies from Mr. Hewitt on February 19, 1896:

COOPER, HEWITT & CO.,
New York, February 15, 1896.

DEAR MR. BAYLIES: I am in receipt of your letter of the 15th instant, containing your recollection of the conversation between yourself and myself yesterday in reference to the Pacific Cable Company of New Jersey. I am sorry to say that most of the statements made by you are inaccurate and erroneous except as to the first specification. I have reason to know that Colonel Spalding while in England made a contract with the Telegraph Maintenance and Construction Company for the manufacture and laying of a cable between San Francisco and Honolulu, but I do not know how far this contract is a conditional one.

When Colonel Spalding returned to New York he did not bring with him any letter from Sir John Pender to me asking me to organize an American company, for establishing and maintaining such a cable, but, on the contrary, Gen. Wager Swayne had previously asked me to become an incorporator in such a company, and I had agreed to do so before I saw Colonel Spalding or received any letter whatever on the

subject from Sir John Pender. *I repeated, however, what I had done to Sir John Pender, and received from him a letter thanking me for my cooperation and asking me as far as possible to look after the telegraph interests which he controlled in other parts of the world, so that proper arrangements for business might be made between them and the new cable line to the Hawaiian Islands.*

Third. I did not therefore proceed to organize any company in accordance with any request from Sir John Pender, nor did I become a subscriber to such a company in consequence of any such request from him; but in view of the fact that his relations and mine had been most intimate, I stated to you that I was sure he would *indemnify me against any loss arising out of the transaction*, although I have no such obligation in my possession from him. Neither did I apply to my friends to aid me in forming a company, but I mentioned the matter to one friend, who also became a subscriber of his own free will. His subscription and mine, however, taken together, will not control the company; nor has Sir John Pender any such control, so far as I know.

The conversation to which you refer resulted from information conveyed to me that you had made a statement to the committee in Washington to the effect that the company was an English one and was controlled by Sir John Pender in the interest of foreign cable lines. I understand that you have my name as your authority for this statement. I informed you that you had misunderstood me and that it was not true that Sir John Pender controlled the American Company. Neither do I control it, *but I was induced to take an interest in it, first, because I wished to do a friendly act to Sir John Pender*, and secondly, because last year when the matter was before Congress I informed the House Committee on Foreign Affairs that I was sure the enterprise could be executed with the aid of a subsidy from the Government, thus relieving it from the expenditure of the large capital required.

In conclusion let me say that I have every reason to think that the Pacific Cable Company of New Jersey is in the hands of American citizens of substantial position and character, and that if the contract be made with the Government its terms will be fully complied with by the company.

Sincerely, yours,

ABRAM S. HEWITT.

EDMUND L. BAYLIES, Esq.,
54 Wall Street, City.

While Mr. Hewitt attempts to disclaim for Sir John Pender any interest in the proposed Spalding cable between San Francisco and the Hawaiian Islands, it should be borne in mind that Sir John Pender has had his eyes fixed on the Pacific Ocean and the possibility of cables being laid there which would threaten the monopoly of his own Eastern Telegraph Company for a number of years past. This is borne out by the following extract from the proceedings at one of the semiannual meetings of the Eastern Extension Australasia and China Telegraph Company, limited, held in the spring of 1894.

A perusal of Sir John Pender's speech will show how closely he has thought out the whole matter of a cable in the Pacific, and as he says at the end, one may depend upon it that he will take good care to know all about the matter when any cable in the Pacific is concerned. In view of this statement, and of the admitted fact that Colonel Spalding has discussed with Sir John Pender the whole question of his proposed Hawaiian cable, it *can not* for a moment be supposed that Sir John

Pender did not fully realize the importance to him of controlling such a cable, and take such steps as were necessary to that end. The following are extracts of what took place at the meeting above referred to:

[Extract from "The Electrician," April 20, 1894, No. 831, Vol. XXXII. Companies meetings and reports.]

EASTERN EXTENSION AUSTRALASIA AND CHINA TELEGRAPH COMPANY, LTD.

[Sir John Pender, chairman.—Speech.]

* * * * * * *

"A Pacific cable is not wanted to meet commercial requirements, the existing service to Australia being acknowledged to be one of the most efficient and cheapest in the world, capable of transmitting a far greater traffic than it at present carries. Consequently to put down another line of cables on commercial grounds, at a cost of nearly two millions sterling, or four millions sterling, if duplicated, would be simply throwing away money, and promoting unnecessary and ruinous competition; and as the existing system was established by private enterprise, without any governmental assistance whatsoever, Her Majesty's Government could not in equity grant pecuniary aid to the proposed competing line without subsidizing or guaranteeing our cables to at least the same extent. If, however, a Pacific cable is required for strategic purposes, which I very much doubt, and the Governments concerned are prepared to provide the necessary subsidies to enable it to be carried out, then it would be better and cheaper for them to arrange with us to do the work.

By this means our special facilities and large experience in cable matters could be profitably utilized, and the line worked in connection with, instead of in opposition to, the present service, thus avoiding injury to existing interests. To show how utterly inadequate the terms proposed by the Wellington conference are, I may mention that a Pacific cable would require no less a sum than £237,000 a year to cover its working expenses, maintenance, amortisation, and interest on capital, so that a 4 per cent guarantee, or only £72,000, would still leave £165,000 a year to be made up by the earnings of the line; and as the value of the whole existing traffic with Australasia, if diverted to the Pacific, would only produce about £90,000, at the proposed reduced rates there would still be a deficit of £75,000 to be made up, even if the Pacific cable carried the whole traffic. These figures speak louder than words, and show clearly enough that a Pacific cable is quite impossible unless the Governments interested are prepared to give a very large subsidy toward carrying it out.

With regard to our relations with the foreign Governments with whom we are associated, I am happy to state that, with one solitary exception, they are all that could be desired, but in China, where the land lines are unfortunately competing with the cables, we have not yet succeeded in bringing about the friendly working between the telegraph administration and the cable companies which we have so long striven for. No effort will, however, be spared to secure a good understanding with the Chinese if possible. The remarks which I have just made respecting the Pacific cable agitation, and which I purposely read, have been carefully thought out and put clearly and distinctly, with the object of their being read by those who are talking and thinking about this Pacific cable. For myself, I am bound to say that,

looking to the nature of the agitation and to those engaged in it, and looking at the peculiar pecuniary position both of our own country and the colonies at the present moment, I do not regard this Pacific cable with anything like fear or dread.

"It is not wanted, I believe, for strategic purposes, and certainly it is not wanted for commercial purposes, and I am, therefore, satisfied that the project is very far off yet from being carried into effect. If, after the hard times which have been experienced in the Colonies, a great period of success comes, and the Colonies go on developing in the future as they have done in the past, rendering necessary another line of telegraphy, we are prepared to deal with the matter, but on such terms as would not only protect existing interests but also give us a fair return on any money that might be placed in it, whether it is carried out by the present route or by the Pacific. I think I have now said enough about the Pacific Cable."

* * * * * * *

[Sir John Pender's speech—Continued.]

Mr. Newton has referred to the Pacific cable agitation. Where there is a large cable going to be laid, and where there are people who are looking out for contracts, you never can be other than suspicious. We are suspicious, and that makes us more attentive and more watchful. You may depend upon it that if this cable is laid, the men who are moving now in it will have very little to do with the carrying out of the work. I have many contracts with our Government, and I can truly say that they are about the hardest bargainers I have ever come in contact with, and I have had a great deal of bargaining in my life. But when a bargain is made they stand by it, and we have no trouble. I know that they are strong and that increases our strength. I am quite satisfied that there is no immediate prospect of contracts being inquired for in connection with this *Pacific cable, but when they are you may depend upon it that I shall take good care that I know all about the matter.* [Applause.]

Attention is called to the statement made in Mr. Hewitt's letter as to how he came to be identified with the Pacific Cable Company of New Jersey, which, in his own words, was, first, "because I wished to do a friendly act to Sir John Pender."

Again, the same letter contains practical admission of the statement heretofore made, that Sir John Pender had guaranteed Mr. Hewitt's subscription of $150,000.

These facts fully sustain our statement that there is a strong English influence behind the Spalding scheme, and that the United States is expected to make a contribution to a monopoly enjoyed by foreign companies in China and Japan, for which Sir John Pender is chairman.

JAMES A. SCRYMSER, *President.*
EDMUND L. BAYLIES, *Vice President.*

PACIFIC CABLE COMPANY OF NEW JERSEY.

MEMORANDUM IN RELATION TO ITS APPLICATION FOR A SUBSIDY IN AID OF THE ESTABLISHMENT OF A TRANSPACIFIC CABLE.

If the immediate establishment of such a line is sufficiently desirable on public grounds to warrant a grant of public moneys to secure it, the same consideration demands that a guaranty of performance be exacted sufficient in amount to prevent any avoidable failure to build.

There are two sources from which hindrance and delay of this sort may be apprehended.

1. The present large telegraphic business between North and South America and Japan, China, and Australia is, of course, done over the existing transatlantic cables. Those cables are more than adequate for all the business offering. A withdrawal of the business between this continent and the far East by transfer to a route so much more direct would mean a loss to them, greater each year than any moderate forfeit which might be attached by the United States to any contract not meant to be performed.

The same thing may be said of the situation and interest of the land lines in Europe and in Asia over which a telegram from any part of this continent to Japan, China, or Farther India is of necessity routed at this time.

2. Delay in building an American transpacific line is of course promotive of the construction of a Canadian transpacific line.

The labor and interest expended in Australia and other English colonies, and in Canada also, to prepare for and induce the establishment of a Canadian transpacific line, and the favorable responses of the secretary for the colonies, is familiar history. The British colonies are perhaps too remote to be under sharp temptation to contract with the United States to build and then not build; but that is not true of the very large Canadian Pacific railroad and telegraph interests.

For these reasons all that can be done should be done to secure that any contract which is made shall be such as no one can afford to make who does not propose to carry it out; and this is more important than a slight difference in price.

Excessive rates for messages over the proposed transpacific cable, if such a line is established, would be almost as much to the advantage of the lines over which American messages to the far east now go as would be the failure to constitute a transpacific line.

There is but one really effective way to prevent this. The United States, if it aids largely in constructing the proposed line, should, if possible, reserve to itself the power at all times to prescribe the rates of tolls, not only for itself but for the public whose money it expends.

The other contracting party should find protection in a counterstipulation that the rates be just and reasonable. Let the Postmaster-General have power from time to time to order any modification of rates, the burden to be upon the company of proving, if need be, to the courts that the rate established is unjust. This is virtually the position in which any private corporation whose expressed object is a public service is placed already by the common law. An act of Congress, which has been in force for thirty years already, makes the Postmaster-General the arbiter of the price at which messages of the United States shall be sent over most of the telegraph lines within its territory. The telegraph is but an extension of the mail, and its affairs come legitimately within the postal jurisdiction. Government messages should not go free, but at a stipulated rate, whatever that rate may be.

The primary reason why a price should be allowed and be insisted on is that it operates as a restriction on the quantity. Of necessity only most general and flexible terms can be employed by way of definition in a statute or in any contract by which such a right is reserved to the United States. Abuses, not serviceable to the United States, most burdensome to the company, and seriously lessening the facilities open to the public are certain to grow up, unless there be a pecuniary ground on which the Government can base and will have motive to establish a rule against indiscriminate use.

The subsidy itself, moreover, is a quasicommercial transaction. The company ought not to be deprived of this quasicommercial feature, or of the equities arising out of it. The United States ought not to require the company with whom it contracts to bind itself to build farther than Honolulu.

Granting a subsidy is tantamount to a declaration that the importance of establishing the line is such as to warrant the assumption of a public burden. The situation and the disposition of Japan fully warrant the statement that its people ought to and can be induced to assume part of that burden. Any such expectation is of course ended the moment the United States holds a contract with a responsible concern to lay a cable to Japan. It goes without saying that if any reliable company makes with the United States a contract by which Japan is relieved from a payment to the company which it otherwise would make, that company must of necessity be charging the United States a larger sum than it would otherwise be willing to accept. It is therefore to the pecuniary interest of the United States that Japan should be left to contract for its own end of the line.

What, then, can the United States properly do to secure the speedy completion of a through line to Japan?

It is at least not irrelevant to say in reply that to whatever extent a cable line from the United States to Honolulu proves to be unremunerative to its owners, to that extent they may be relied upon for being both active in seeking and reasonable in making a contract with Japan.

The cost of establishing a cable from San Francisco to Honolulu with needful appurtenances is easily ascertained. Interest on the sum plus the annual cost of operation and the annual cost of provision for repairs (both of which are as easily ascertained) make up the annual outgo. On the income the subsidy is definite. If the business income also were definite there would be no difficulty in the problem. It would be necessary only to see that the income from both subsidy and business, when applied to the outgo, left a deficiency large enough to insure active endeavor on the part of the proprietors to come to an arrangement with Japan.

The only difficulty arises from the uncertainty as to the income derivable from business messages. That is perhaps only apparent. A little inquiry would perhaps fully disclose that a sum certain would be for both sides a safe conjecture as to the annual gross receipts from business between the United States and Honolulu. It might also be easily shown that this sum would not exceed the annual cost of operation, and that to set off the one against the other would be at least not unfair to the United States.

If this be assumed it should be only necessary to show that the amount of proposed subsidy is very materially less than the necessary annual charges for interest on the cost of construction plus the annual cost of providing against breaks, to have set up at least one energetic safeguard against failure to complete a transpacific line. Indeed it may be said that the subsidy named in the bill now pending, when applied to the necessary outgo for interest and maintenance, exclusive of the cost of operating the business, leaves a deficiency which simply can not be met without aid from Japan for any great length of time.

All of these conditions, I am authorized to say, the Pacific Cable Company of New Jersey is fully authorized to meet. It will give the amplest guaranty that its already complete preparation to immediately lay a cable to Honolulu shall not fail of that result; will leave the question of rates *in permanent* control of the Post-Office Department, *subject only to appeal to* the courts of the United States in case of

need, and will accept the subsidy now contemplated, which is easily shown to leave the company entirely dependent, not only for all profit but for relief from loss upon the speedy completion of a transpacific line.

The status and composition of the company requires a word in this connection. It has an authorized capital of $1,000,000, fully subscribed and fully answerable for its lawful obligations. The subscribers are—

Z. S. Spalding, of Hawaii	$250,000
Abram S. Hewitt, of New York	150,000
D. O. Mills, of New York	100,000
James J. Hill, of St. Paul, Minn	100,000
Grenville M. Dodge, of Council Bluffs, Iowa	100,000
J. Hull Browning, of Tenafly, N. J	100,000
Mason W. Tyler, of Plainfield, N. J	100,000
Frederick D. Grant, of New York	50,000
Wager Swayne, of New York	50,000

Enough is known of these gentlemen to reasonably insure, it is believed, the performance of a contract if they make it. Indeed, as to Colonel Spalding, it may be added that his position and interests in Hawaii leave him no alternative, if an agreement with the United States is reached, but to carry out that agreement.

There remains to be discussed the Hawaiian concession now in force.

Strictly speaking that is not so much a concession to an individual, as it is an overture from the Hawaiian Government to the United States. Its requirement is peremptory that the first cable shall be laid to San Francisco, until that is done the concession affords no right to build a line elsewhere.

In aid of such a line to the United States a subsidy is granted, but it is expressly conditioned on "substantial aid" within a short limit of time by the United States. It provides also for an interisland system, to be maintained by the concessionaire. It is really an invitation from the Hawaiian Government to the United States to come into direct communication with every important member of the Hawaiian group, the Hawaiian Government offering to pay its proportion of the expenses.

The exclusive feature has its essential value in the superior advantage which it gives to the United States as against England for reaching by telegraph the Asiatic coast. The general and emphatic protests made in England against this feature of the grant, the calls made there for diplomatic intervention to remove it, and the subsequent efforts to avoid it by a route by way of Fanning Island, are within common knowledge on this subject.

To reject this overture and aid by subsidizing instead the laying of a cable to Pearl Harbor would be for the United States to say to the Hawaiian Government, "We decline to cooperate with you in the matter of mutual concern, and prefer to get our landing place en route to the Asiatic coast, not from your grant made to us for that purpose, but under cover of a grant which you made to us for an entirely different purpose, and decline also to notice the arrangement you have made for an interisland line, at your own cost, but which must fail by reason of the course we have pursued."

Of course all this would be justified and right if the concessions were made the basis of large personal demands. In fact it is made strictly impersonal, being offered to the United States through the Pacific Cable Company of New Jersey, upon a basis which makes no other use of it than to diminish the amount of annual subsidy which otherwise a responsible agreement to construct must require from the United States.

Very respectfully submitted.

THE PACIFIC CABLE COMPANY OF NEW JERSEY,
By WAGER SWAYNE.

PACIFIC CABLE COMPANY,
New York, February 28, 1896.

DEAR SIR: In accordance with my telegram of yesterday, February 27, I inclose for your information a letter from Thomas T. Eckert, president of the Western Union Telegraph Company.

I send you this in order to remove any wrong impressions derived from General Swayne's remarks made before your committee February 26 to the effect that the Western Union Telegraph Company had in the past been opposed to the establishment of a Pacific cable.

In this connection I beg to point out that prior to the establishment of the cable of the Central and South American Telegraph Company all European messages to South America were routed via Lisbon to Pernambuco, Brazil, and thence beyond. The rates in 1882 from Buenos Ayres via this all-English route, Buenos Ayres being counted as two words, were as follows:

Country.	First word.			Each following word.	
	£	s.	d.	s.	d.
Portugal	1	16	7	16	2
Great Britain	1	17	5	16	7
Spain	2	0	0	17	3
France, Belgium, and Holland	1	18	4	17	0
Switzerland, Germany, and Italy	1	18	4	17	0
Austria-Hungary and Greece	1	18	9	17	2
Russia in Europe	1	18	9	17	2

The establishment of the Central and South American Telegraph Company, of which I am president, has resulted in reducing rates to places in South America from $6 and $7 a word to an average of about $1 a word, and, as indicated in General Eckert's letter, our service is unequaled over any similar length of line anywhere. In fact a large share of the European business is routed our way, and you will see it is in the interests of the Atlantic cables and the Western Union Telegraph Company that it should be so routed.

I need not explain to one so well informed as yourself that the establishment of our intended Pacific cable must be equally advantageous to the public, the Western Union Telegraph Company, the Atlantic cables, and all connecting lines.

I inclose a note from Mr. J. Pierpont Morgan, which, I trust, will satisfy you that the Pacific Cable Company of New York is acting in good faith. This seems hardly necessary, but, in view of statements made to the contrary, I think it best to give you written proof of our sincerity.

I have the honor to remain, yours, very truly,

JAMES A. SCRYMSER,
President.

HON. JOHN SHERMAN,
Chairman Committee on Foreign Relations, Washington, D. C.

NEW YORK, *February 16, 1896.*

MY DEAR SCRYMSER: I hear from Washington that parties are asserting, or endeavoring to convey the impression, that the Pacific Cable Company is not acting in good faith and does not intend under any circumstances to work under a charter even if obtained.

I think you should go to Washington and remove any such imputations.

Should the Governments interested be liberal toward the enterprise in its inception and until its business shall become established, the Pacific Cable Company could not be otherwise than a success, in my opinion, from the outset, and consequently could have no object in declining to go ahead. Besides this, the names of the parties behind it ought to be a sufficient guarantee of good faith and bona fide endeavor.

Yours, sincerely,

J. PIERPONT MORGAN.

JAMES A. SCRYMSER.

EXECUTIVE OFFICE WESTERN UNION TELEGRAPH COMPANY,
New York, February 28, 1896.

DEAR SIR: Replying to your inquiry yesterday relative to the telegraphic facilities of the Western Union Telegraph Company between San Francisco and New York City, with particular reference to the provision which they would afford for the business of your proposed Pacific cable, I beg to say that our facilities between the points named, as well as between other points in the United States and San Francisco, are of the most ample and reliable character. They would enable us to render between New York and San Francisco the same high grade of service on the business of your proposed cable that we render now between New York and Galveston on the business of your Mexican and Central and South American companies, and which has enabled those companies to compete so successfully, not only for business with points in the United States, but in connection with the Atlantic cable service of this company, for business between European and South American points. In fact, the remarkable success achieved in the joint working of the Atlantic cables, the Western Union, Mexican and Central and South American systems, which furnishes a service which is, I believe, unequaled over any similar length of line anywhere, is, in my judgment, the best guarantee of a like result from the establishment of your proposed Pacific cable.

Yours, very truly,

THOS. T. ECKERT,
President.

JAS. A. SCRYMSER, Esq.,
No. 37 Wall street, New York.

WASHINGTON, D. C., *March 2, 1896.*

DEAR SIR: Mr. Scrysmer wires me to say that he will be greatly obliged if you will have printed in the pamphlet concerning the Pacific cable bills the amended bill herewith inclosed, and the letter from Admiral Irwin in respect to the "Midway Islands," the original of which letter was sent you some time since.

Mr. Scrysmer would also like to have printed his letter to Senator Lodge in respect to the cost of cable repairs, and his letter to you of Saturday inclosing one from General Eckert, of the Western Union Telegraph Company.

These letters Mr. Scrysmer considers important to have printed as evidencing the merits of the bill in which he is interested, looking to the construction of a Pacific cable.

I am, sir, your obedient servant,

S. C. NEALE.

Hon. JOHN SHERMAN,
United States Senate, Washington, D. C.

[Parts in *italics* to be proposed to committee as amendments to bill.]

[S. 876. Fifty-fourth Congress, first session. In the Senate of the United States, December 16, 1895. Mr. Carter introduced the following bill; which was read twice and referred to the Committee on Foreign Relations.]

A BILL to provide for telegraphic communication between the United States of America, the Hawaiian Islands, Japan, *and China*, and to promote commerce.

Whereas the Pacific Cable Company, a corporation organized and existing under *and by* virtue of the laws of the State of New York, is desirous of establishing a

line of submarine telegraphic communication between the Pacific coast of the United States and Japan *and China*, stopping at one or more of the Hawaiian Islands and other islands in the Pacific Ocean on the way, and such telegraphic communication will tend to promote commerce: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said Pacific Cable Company, a corporation organized and existing under the laws of the State of New York, its successors and assigns, shall have the privilege of laying, constructing, landing, maintaining, and operating telegraph or magnetic lines or cables in and over the waters, reefs, islands, shores, and lands over which the United States now has or may hereafter acquire jurisdiction, by treaty or otherwise, the general route of said cables being from a point or points on the Pacific coast of the United States to Pearl River Harbor or other landing on the island of Oahu in the Hawaiian group of islands, *and thence to such other islands in the Pacific Ocean as said company shall select and to Japan and China: Provided, however*, That the said Pacific Cable Company, its successors and assigns, shall at all times observe all the stipulations herein contained on its part to be performed and kept.

Second. That the said cable company shall, within three years from the approval of this act, as hereinafter provided, well, substantially, and in the best and most workmanlike manner construct, lay in proper working order, and establish a submarine telegraph cable from a point or points on the Pacific coast of the United States to the coast of Japan on a route via islands in the Pacific Ocean, connecting directly or indirectly with one of the Hawaiian Islands, such line of submarine telegraph cable to be capable of transmitting at least fifteen words per minute; no liability in respect to the construction, working, or maintaining of said cable to attach to the United States Government other than the liability to pay from time to time the compensation hereinafter provided for.

Third. That the Secretary of the Treasury shall nominate a person or persons to certify as to the completion, opening, and efficient working of said telegraph cable, and as to the fulfillment of all the conditions of this agreement, and the said cable company shall afford such assistance and information as may be necessary to the person or persons so nominated as aforesaid, and the person or persons so nominated as aforesaid shall immediately, upon the completion of each of the sections of said cable, to wit, the section between the Pacific coast of the United States and the Hawaiian Islands and the sections between the Hawaiian Islands and the Empire of Japan, respectively, give a certificate to the cable company to that effect.

Fourth. That the Secretary of the Treasury shall, from and after the effective completion and opening for the transmission of messages of the cable between a point or points on the Pacific coast of the United States and the Empire of Japan, on a route via islands in the Pacific Ocean, connecting directly or indirectly with one of the Hawaiian Islands, as above indicated, when such completion shall have been certified as hereinabove provided, pay during the term of twenty years, thence next ensuing, to said cable company, the yearly sum of twenty-two dollars per nautical mile for each such mile of cable actually laid, including necessary slack, between the starting point of said cable, on the Pacific coast of the United States, and the coast of Japan, on a route via islands of the Pacific Ocean, connecting directly or indirectly with one of the Hawaiian Islands (the number of said miles to be certified to the Secretary of the Treasury by the person or persons who shall certify as to the completion of said cable, but the entire length of said cable, for which such payments are to be made, is not to exceed seven thousand two hundred and fifty miles), said yearly sum so ascertained as aforesaid to be paid in equal quarterly payments, the first of such payments to be made three months after the date certified as that upon which the said cable was in complete and efficient working order: *Provided, however, That the compensation hereinabove provided to be paid by the United States to the said cable company for that portion of the said cable laid between the Pacific coast of the United States and the Island of Oahu, in the Hawaiian group of islands, shall become due and payable within three months after such portion of said cable shall have been certified to the said Secretary as completed, as hereinbefore provided: Provided, nevertheless, That in the event of interruption in the good working order of said cable, a period of six calendar months from the day of such interruption shall be allowed for repairs before the said annual compensation or any part thereof heretofore agreed to be paid in respect to such cable so interrupted shall cease; but the amount of such compensation shall in any event cease only in the proportion that the length of the section or sections so continuing interrupted for more than six months shall bear to the entire length of said cable.* Said compensation shall commence again as soon as the section or sections so interrupted shall again be in good working order. All payments herein provided for shall be paid out of the moneys of the United States Treasury not otherwise appropriated.

Fifth. That all messages in the service of the United States Government, or of any of the Departments thereof, or of any of the officers or officials thereof, relating to official business, shall be carried over the lines owned by said cable company as herein

provided for without charge during the aforesaid period of twenty years *and at all times thereafter*, and preference shall always be given such messages in transmission.

Sixth. That in case of war, rebellion, or other emergency, the United States Government may take possession of the said line and of the stations, offices, and apparatus thereof, so far as the same are within the jurisdiction of the United States, and may keep possession thereof so long as the said Government may think requisite, and the said cable company shall do all in its power to enable the said Government to have and enjoy the benefit and advantage thereof; and the Government of the United States shall make to the said cable company such compensation in money for all loss suffered by the cable company by reason of the exercise of the powers by this section conferred as shall be admitted to be reasonable, or determined in case of dispute by arbitration.

Seventh. That no harbor or port duties or charges, except pilotage, shall be levied during the aforesaid term of twenty years upon any vessel exclusively engaged in laying, repairing, or maintaining any of the cables of the said cable company.

Eighth. *That the rate for ordinary private messages over the lines owned by said cable company shall not at any time exceed the following amounts: On messages between the United States and Japan and China one dollar and twenty-five cents per word, and on messages between the United States and the Island of Oahu, in the Hawaiian group, thirty-five cents per word.* Press rates over the lines owned by said cable company shall not exceed one-fourth the rate which shall be charged for ordinary private messages.

Ninth. That in case the Pacific Cable Company shall arrange for an extension of cable communication from any islands of the Pacific to China, all the provisions, conditions, and obligations of this act shall apply in all respects to such extension: Provided, however, That the mileage of such extension as to which the United States Government is to make compensation to said company shall not in any event exceed seven hundred miles.

Tenth. That the said cable company shall, within ninety days after the approval of this act, deposit with the Secretary of the Treasury of the United States bonds of the United States Government to the amount of one hundred thousand dollars as a guarantee to the said Government of the good faith of the said company, and that the said company will establish a submarine cable in accordance with the provisions of this act. Such bonds to be forfeited to the Government of the United States of America in case the said company shall fail to complete its said cable, in accordance with the terms of this act, between the United States and the Island of Oahu, in the Hawaiian group, within eighteen months from the date of approval of this act, and between said last-named island and Japan within three years from the date of the approval of this act.

Provided, however, That on the establishment of the said cable between the United States and the Hawaiian Islands, as in this act provided, one-half of the said bonds shall be thereupon returned to the said cable company, or its assigns, and the balance of said bonds shall be returned to said cable company, or its assigns, upon the establishment of the said cable between the Hawaiian Islands and Japan.

Eleventh. That the said cable company shall have said line of submarine cable laid and in efficient working operation within the times hereinbefore prescribed, otherwise this grant shall be null and void and said cable company shall become liable to the penalties prescribed in the last preceding section of this act: *Provided, however, That the said cable company shall not forfeit the rights secured by this act or become liable to the penalties aforesaid by reason of any delay in completing the laying of said cable arising from strikes or general lockouts of workmen, or from fire, breakage of machinery, bursting of boilers, or other circumstances causing entire or partial stoppage of its work, or from shipwreck, collision, or other accident to shipping, or from war or causes beyond its control.*

"MIDWAY ISLANDS."

Eastern Island is at the eastern extremity of the reef, 1¼ miles in length and half a mile wide, from 6 to 15 feet high, and is covered with coarse grass and small shrubs. The beach of coral sand is of dazzling whiteness.

Sand Island, 1¼ miles west of Eastern Island, is 1½ miles long, three-fourths of a mile wide, and 57 feet high, on the summit of which a flagstaff has been erected. There is very little vegetation on this island, and the glare from the sand is very trying to the eyes.

The observation spot near the southwest end of the island is in latitude 28° 12′ 22″ north, longitude 177° 22′ 20″ west.

Sand spit.—Near the northwest point is a sand spit which varies in size considerably from time to time, sometimes almost disappearing.

Welles Harbor is formed by a gap in the coral reef, and is roomy and safe, with the entrance open to the westward, and 1¼ cables wide where most contracted. (See plan of Welles Harbor, scale, M, 7 inches, on sheet No. 2169.)

The bar, which is well within the entrance, and on which there is no swell during the trade winds, is narrow, and has an uneven bottom or coral rock and small sand holes. Its depth varies from 16 to 21 feet, but changes so often and suddenly as to make it unsafe to count on crossing without getting a cast of 18 feet. Inside the bar the depth for anchorage is from 5 to 7 fathoms, white sand. The harbor is therefore only fit for vessels drawing less than 18 feet; vessels of deeper draft must lie in Seward road, picking out a sandy bottom to anchor on.

The lagoon near the center of the reef is 2 miles long and 1½ wide, with many coral heads in it, with from 1 to 2 fathoms of water over them.

Welles Harbor is separated from the lagoon by shoal water 1 mile in breadth, and as far as could be ascertained there is no passage for ships. It might be possible for a light-draft vessel to get into the lagoon by passing to the northward of the middle ground and threading the way in among the rocks, but no regular ship channel exists.

Anchorage.—On the west side sheltered anchorage during the trade winds may be obtained in from 10 to 13 fathoms at the entrance to Welles Harbor.

The coral ridge which extends from the northwest end of the reef to the southern wall gives very irregular soundings, having deep fissures between the rocks and again spaces of sandy bottom. The *Lackawanna* lost both anchors here.

Supplies.—Fish of many varieties are plentiful, and by hauling the seine enough may be caught to supply the ship's company. Seal and turtle abound. A few curlew and plover are the only land birds on the islands.

Water may be procured on both islands by digging from 4 to 7 feet, and, though at first full of impurities, yet by filtration and allowing it to stand it becomes drinkable.

Cure, or Ocean Island, lying 56 miles west of Midway Islands, which it closely resembles both in formation and appearance, consists of an island 1½ miles long and three-quarters of a mile wide, and two small islets or sand banks surrounded by a reef, somewhat oval in shape, which incloses a lagoon, the entrance of which is to the southwestward, about 1 mile in width and shallow.

The atoll is 14¾ miles in circumference, and no outlying dangers have been observed.

Green Island is in the southeast corner of the lagoon, is about 20 feet high, covered with small shrubs, and similar to the eastern of the Midway Islands. To the westward of it are two small islets or sand banks, the western of which is about 10 feet high, in latitude 28° 25¾′ north, longitude 178° 29′ 3¼″ west.

A bank extends around the reef to about 1 mile, with 20 to 30 fathoms water over it. The best anchorage is on the west side, near the northwest point of breakers, in from 8 to 12 fathoms of water, rocky bottom. From the appearance of the islands they are sometimes visited by severe storms, the sand being thrown into numerous cones and pyramids.

PACIFIC CABLE COMPANY,
New York, February 27, 1896.

DEAR SIR: I have the pleasure to report that on Friday, February 7, I had an opportunity to explain the scheme of the Pacific Cable Company to the Senate subcommittee on Foreign Relations, the Hon. Senator Frye being chairman of the subcommittee.

The committee desired full information—

First. As to the cost of the proposed United States-Hawaii cable laid and guaranteed.

Second. Cost of operation.

Third. Cost of repairs and renewals.

This with the view of determining whether or no it was advisable for the United States Government to establish a cable on its own account or to secure by contract, as proposed by the Pacific Cable Company, all the benefits of ownership, and thus be exempted from a large outlay of capital and risk.

I informed the committee that on March 1, 1895, I had filed with the Honorable Secretary of State, Mr. Olney, a proposal for the manufacture and guaranteed successful laying of a first-class cable, complete, between San Francisco and Honolulu for the price of $2,150,000. I explained that I had supplied this information solely from patriotic motives, believing that the United States Government should be fully informed as to the fair cost of such an undertaking.

Cost of operation.—I expressed the opinion that if the cable was to be worked night and day, as all transatlantic cables are, the necessary office and staff expenses in San Francisco would be $20,000 a year; in Honolulu, $25,000 a year; administration and executive offices, traveling expenses, and supplies, $25,000; total operating expenses, $70,000.

Repairs and renewals.—With regard to repairs and renewal accounts I explained that it is the aim of all well-managed cable companies to provide from surplus earnings a fund that will cover all repairs and yet be sufficient to renew their cable, say, in twenty years, that being the estimated life of a deep-sea cable. No one can foretell the amount of cable necessary for deep-sea repairs. It may take 25 miles of cable, and in some instances has taken over 700 miles of cable, valued at $1,000 a mile. The repair may be accomplished in a month, and there are several instances where it required a year or more, necessitating the employment of a large ship, at an expense of $1,000 to $1,500 a day. The expenditure of cable and the time employed depends upon the depth of water and the season during which the repair is undertaken.

For your information I will give you some facts relative to the experience of several cable companies, fully sustaining the above statements.

The Direct United States Cable Company.—This company's cable is 2,564 miles in length, and was laid between Ireland and Nova Scotia in 1875—twenty years ago.

The company has accumulated a reserve fund during that time of $1,500,000. Should the company decide to lay a new cable now that its present cable has about reached a critical age, you will observe it is short of the amount necessary to provide a new cable by $1,000,000, estimating the cost of the cable at $1,000 a mile.

One repair of the cable of the Direct Cable Company cost that company $294,700.

Western Union Telegraph Company.—This company has two cables between England and Nova Scotia, each being about 2,562 miles in length. These cables were laid in 1881-82. This company has had

several interruptions, one of which lasted just within a year, another just over a year. The steamer *Faraday*, 8,000 tons, was employed on the last repair expedition at a cost of $1,500 a day. She was at sea for over four months, being unable to make repairs owing to bad weather. The steamer was obliged to put into Halifax for coal and supplies, where she was detained for two months, waiting for good weather. She was again at sea for nearly two months, during which time nothing was heard from her and it was feared she had been lost. However, she recovered the cable and repaired it. It is known that one of these repairs cost the company over $500,000, including the cost of a new cable employed in the repair. The second serious interruption, which continued over a year, was, I know, very costly. If I can obtain the figures I will send them to you.

French Cable Company.—This cable was laid between the coast of France and the island of St. Pierre, off Nova Scotia, in 1879. It is 2,281 miles in length. This company was extravagant in paying out dividends and consequently did not accumulate a sufficient reserve fund. Such as it did accumulate was absorbed by frequent repairs. Its cable was interrupted last June, since which time the steamer *Faraday*, and subsequently the steamer *Arago*, have been engaged endeavoring to make repairs at an expense of $1,500 a day. The *Arago* left St. Johns December 23, 1895, and has not been heard of since that date. She is probably laying to in the neighborhood of the break waiting for good weather.

The position of this company, owing to the fact that it is without a reserve fund, is particularly unfortunate. You can well understand the difficulty of raising money by loan or otherwise on a useless cable at the bottom of the sea.

Eastern Telegraph Company.—The cables of this company are of all ages, lengths, and weights; the seas in which they are laid differing very much as to the type of cable used and the depths in which they are laid, some being coast lines, others being in deep water.

Its reserve fund January 1, 1896, amounted to $2,110,000. In the opinion of the chairman, as expressed in its last report, the reserve fund should be double that amount.

Anglo-American Telegraph Company.—This company expended in the year 1894, $371,800 on repairs to one cable, of which $280,000 was for new cable inserted. Thus you will see whoever owns the cable between the United States and Hawaii must always be prepared with 250 or 500 miles of spare cable for a deep-sea repair.

Mexican Telegraph Company (of which I am president).—This company operates 704 miles of cable between Galveston, Tex., and Vera Cruz, Mexico. It is one-third the length of the proposed United States-Hawaii cable. It is a coast line in water of about 100 fathoms. The Hawaiian cable will be in water averaging over 3,000 fathoms in depth. The board of directors of the Mexican Telegraph Company have deemed it prudent to carry to reserve from earnings $1,007,000 during the past thirteen years, averaging $77,461 per annum. The same policy should be applied in the case of the Hawaiian cable; and if so, its length, 2,433 miles, in 3,000 fathoms of water; and particularly its great distance from source of supply for repairs and renewal material.

These figures fully sustain my statement, that it would be p udent to reserve at least $200,000 to $250,000 a year for the first five years to provide for the repair and renewal of the proposed United States-Hawaii cable. I say for the first five years, because experience proves that if there be any weak points in the cable or any extra hazardous

bottom on the route five years should develop them. After five years at least $150,000 annually should be applied to the renewal fund.

The examples I have given you, you will bear in mind, relate to cables near at home. Repairs in the Pacific Ocean will be at greater depths than in the North Atlantic, and you will bear in mind that all cable and materials having to be transported thousands of miles will largely increase the cost as compared to repairs to cable between England and the United States.

You will note that the United States Government, should it undertake to establish the cable between the United States and Hawaii as a Government undertaking, must be prepared to expend $2,150,000 for cable, and $400,000 for repair ship and repair gear; total capital expended, $2,550,000; and that for operating expenses, expenses of repair ship, repairs, and renewals the Government must provide at least $475,000 a year. Against this the Government should be credited with earnings from traffic between the United States and Hawaii. The most liberal estimate would be 15 messages a day each way of 8 words each, at $1 a word, or say a gross income of $72,000 a year. This would not equal the interest on the cost of the cable alone at 4 per cent.

The proposition of our Pacific Cable Company is that the Government shall pay the company $180,000 a year for twenty years, for which the Government has the free use of the cable without any of the risks of ownership with Hawaii, Japan, and China.

It may be asked how it is possible that a corporation can afford to undertake such a risk for so little Government compensation. To this I would answer that the one repair ship would suffice for the whole line between the United States, Hawaii, Japan, and China.

Second. That the compensation, say $380,000, annually expected from the Governments interested will partly provide a repair and renewal fund for the whole system.

Third. That the traffic which would be developed by low rates and good management would offer sufficient inducements to those who are acquainted with ocean telegraphy to subscribe to the $10,000,000 necessary for the establishment of the first cable.

The policy would be to duplicate our cable as soon as possible and thus insure our first investment.

For your information I inclose copy of letter from the Western Union Telegraph Company by which you will see that it has three routes between New York and San Francisco, with which city it works direct, night and day. This means that the average time of transmission between London and San Francisco will not exceed twenty minutes, and therefore the time of transmission between London and Japan should be less than forty-five minutes; New York and Japan less than thirty minutes.

Yours, very truly,

JAMES A. SCRYMSER, *President.*

EDMUND L. BAYLIES, Esq.,
Vice-President Pacific Cable Company, New York.

EXECUTIVE OFFICE
WESTERN UNION TELEGRAPH COMPANY,
New York, February 11, 1896.

DEAR SIR: Replying to your inquiry of yesterday, I beg to say that you may rely upon an excellent and prompt service between San Fran-

cisco and New York City for the service of your proposed Pacific cable, if the cable should be laid. We not only have direct copper circuits between those places, but we have three distinct routes to avail ourselves of in case of trouble on either of them.

I need not say that if the cable should be laid and the service established the Western Union Telegraph Company will give it the best and most careful attention.

Yours, very truly,

THOS. F. CLARK,
Assistant to the President.

JAS. R. BEARD, Esq.,
39 Wall Street, New York.

PACIFIC CABLE COMPANY,
New York, February 29, 1896.

Hon. JOHN SHERMAN,
Chairman Committee on Foreign Relations, Washington, D. C.

DEAR SIR: In accordance with your request I herewith submit for the information of your committee a statement respecting the exclusive rights held by English cable companies and their bearing on American commerce and companies.

You are aware that the company connecting Florida with Cuba is an American corporation; the companies beyond Cuba connecting with the Isthmus of Panama, the West India Islands, and the northern coast of South America are English corporations. The grants held by these English companies were obtained by myself and associates in 1869, at which time our Cuba company entered into a traffic agreement with an English company to whom we transferred the grants. Unfortunately, this English company was too late to acquire landing rights in Brazil, as about the same time another English company obtained the exclusive right for forty years for the establishment of submarine cables along the coast of Brazil from Para southward to Argentina. Another English company obtained the exclusive right to connect Brazil with Europe and also obtained exclusive right from Portugal for twenty years. Owing to the high rates charged up to 1880, New York to Panama, $2.28 a word, New York to Demerara in 1887, $3.36 a word, it became impossible to arrange for any extensions to South America. You will observe that these high rates were maintained chiefly for the purpose of having all messages diverted over the Atlantic cables and to South America via Portugal, again across the Atlantic ocean to Brazil and beyond. The rates being as shown in my letter to you of February 28, 1896, $7 and $8 per word, gold.

Realizing the importance of telegraphic communication with Central and South America independent of the English lines above described, the Western Union Telegraph Company made a contract with me whereby it agreed to turn over to the company I was to form all messages destined for Mexico and beyond for twenty-five years, provided they could be transmitted as speedily and as cheaply as by any other route. This resulted in the establishment of the via Galveston route, which is operated by an American company, of which I am president, from Galveston, Tex., through to Buenos Ayres, Argentina. At this place we are blocked from communication with Brazil because of discriminating rates charged by the English companies having exclusive rights on the coast of Brazil. The local rate between Buenos Ayres and, say, Rio de Janeiro is 40 cents a word; that is the rate charged on all messages between Peru, Chile, Argentina, and Brazil, whilst on

American messages the rate is 94 cents a word, the 54 cents discrimination being enforced so as to oblige all United States messages to be routed from New York to Brazil via London, Lisbon, and Pernambuco.

The records of the State Department, from the time of Hamilton Fish down to the present, will show that the policy of the United States Government has been to require reciprocal landing rights, that is to say, any foreign company holding an exclusive right in a foreign country is prohibited landing its cable on the coast of the United States until such foreign country extends a like privilege to an American company. In the year 1890 the Brazilian Government granted to a French cable company the exclusive right of landing a cable on the north coast of Brazil for sixty years. This cable was to be laid to the United States coast via the West India Islands, but owing to frequent interruptions and other difficulties nothing has been heard of it for some years, although some 4,000 miles of cable were laid.

The State Department has for some years corresponded with Brazil protesting against the exclusive rights granted by Brazil to these foreign companies (English and French) and also respecting the discriminating rate of 54 cents per word on American messages destined for Brazil via Buenos Ayres.

Recently the Brazilian Government, owing to diplomatic pressure, determined to avail of its right to purchase from the English company its cables along the coast of Brazil—the Brazilian Government having the right to purchase according to the agreement of the concession granted the English company in 1873—the Government proposing to issue a loan for $10,000,000 guaranteed by the receipts of these cables as security for the loan. Sir John Pender, chairman of the Brazilian Submarine Company, operating the cables between Brazil and Europe, at once set to work to defeat this Government purchase. Through his influence the English Government took possession of the island of Trinidad, undoubtedly an island belonging to the Government of Brazil, located 800 miles off the coast of Brazil. This island is so located that a cable could be laid from the island of St. Vincent to Buenos Ayres in two sections. Without the island of Trinidad it would be impossible, the distance requiring a cable about 3,600 miles in length, which would be so heavy and costly the traffic would not justify it. Out of this has grown all the controversy regarding the island of Trinidad between England and Brazil. Sir John Pender's only object was to defeat the floating of the Brazilian loan, and in that he has been successful, for the establishment of a line to Buenos Ayres via Trinidad would have diverted the traffic on which the Brazilian loan was to be guaranteed. The same monopolizing policy exists with regard to the English cables, of which Sir John Pender is chairman, connecting India, Australia, China, and Japan.

The control of the exclusive right for the Hawaiian Islands by any company friendly to Sir John Pender means that for twenty years all cable communication with the East must be routed over the lines now controlled by Sir John Pender. If any line should be established from the United States to China and Japan, via the Hawaiian Islands, by Sir John Pender or those friendly to him, you can rest assured the rates between San Francisco, China, and Japan will be dictated and arranged to suit the present English monopoly.

I submit, for your information, two telegrams from Sir John Pender addressed to me, which will show you the dictatorial policy he has pursued respecting the reductions made by the companies of which I am *president.*

LONDON, *February 11, 1884.*

SCRYMSER, *New York:*

Brazil lines (Sir John Pender) threaten to reduce Valparaiso rate to 5 or 6 shillings unless you recall the Buenos Ayres reduction tomorrow.

LONDON, *November 1, 1884.*

Chairman Pender says please say to Scrymser, I do not want him to follow us (i. e. in reductions). We have not led in making reductions, but I do not want to follow him in a course which must eventually prove as destructive to him as to the telegraphs with which he is competing.

The present rate to Japan is $2.86 per word; the rate proposed by our Pacific Cable Company is $1.25 per word, consequently you can readily understand why Sir John Pender was so anxious that Mr. Hewitt should see that proper arrangements for business might be made between his lines and the new cable line to the Hawaiian Islands.

It was suggested that a cable line, via the Midway Island, would have advantages over one via the Marshall (German) Islands. Aside from the impossibility of properly maintaining a telegraph station on Midway Island, it is objectionable because it is too remote for cable connections with Australia. However, it is certain this remoteness would suit Sir John Pender.

You are aware that there is not a cable between Europe and the United States that does not touch on New Foundland, Nova Scotia, or the Island of St. Pierre before reaching the United States; consequently, in the event of war between the United States and England, we would be cut off from cable communication with Europe. The establishment of a Pacific cable to Japan, via the Hawaiian and Marshall islands, would in the event of such war have the advantage of giving us communication with Europe, via Russia, and you can rest assured England would not dare to interfere with an American cable touching German, Japanese, and Russian territory. Thus, viewed in every light, an American Pacific cable is a commercial, political, and military necessity, and care should be taken that it is absolutely independent of all English control or influence.

Yours, very truly,

JAMES A. SCRYMSER, *President.*

54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 195.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1896.—Referred to the Committee on Appropriations and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ACTING SECRETARY OF THE TREASURY, TRANSMITTING, IN RESPONSE TO THE SENATE RESOLUTION OF MARCH 12, 1896, A REPORT BY THE COMPTROLLER OF THE TREASURY ON TREASURY SETTLEMENTS NUMBERED 9695, 159, AND 9660, BEING CLAIMS FOR BARRACKS AND QUARTERS CERTIFIED TO CONGRESS FOR APPROPRIATIONS IN HOUSE DOCUMENT NUMBERED 234, FIFTY-THIRD CONGRESS, THIRD SESSION.

OFFICE OF THE SECRETARY,
Washington D. C., March 31, 1896.

SIR: In reply to Senate resolution of March 12, 1896, directing the Secretary of the Treasury to cause the proper accounting officers of the Treasury to reexamine certain claims reported to Congress in House Ex. Doc. No. 234, Fifty-third Congress, third session, I have the honor to transmit herewith a report thereon by the Comptroller of the Treasury, dated the 28th instant, in which the Secretary concurs.

Respectfully, yours,

S. WIKE, *Acting Secretary.*

The PRESIDENT OF THE SENATE.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, D. C., March 28, 1896.

SIR: By your reference I have received an attested copy of the resolution of the Senate of the United States, adopted March 12, 1896, as follows:

Resolved, That the Secretary of the Treasury be, and he is hereby, directed to cause the proper accounting officers of the Treasury to reexamine Treasury settlements numbered nine thousand six hundred and ninety-five, one hundred and fifty-nine, and nine thousand six hundred and sixty, being claims for barracks and quarters certified to Congress for appropriations in House Document Numbered Two hundred and thirty-four, Fifty-third Congress, third session, for the payment of which no appropriations have been made, and if found correct to report the same to Congress at as early a day as practicable at the present session.

In reporting upon the matter referred to in the above-quoted resolution, I respectfully invite your attention to my letter of the 24th instant,

addressed to you, in relation to a similar resolution of the Senate, adopted February 13, 1896 (Senate Doc. No. 189, Fifty-fourth Congress, first session). The remarks made in said letter apply with equal force to the claims now under consideration, all of which fall within the principles of the decision of Second Comptroller Mansur of September 28, 1894, as printed in H. R. Report No. 1843, Fifty-third Congress, third session.

The papers received are herewith returned.

Respectfully, yours,

R. B. BOWLER, *Comptroller.*

The SECRETARY OF THE TREASURY.

54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 196.

IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE SECRETARY OF THE INTERIOR, COMMUNICATING FURTHER INFORMATION IN RELATION TO THE STATEMENT OF ACCOUNT BETWEEN THE OKLAHOMA AND IOWA BRANCHES OF THE SAC AND FOX OF THE MISSISSIPPI TRIBE OF INDIANS, PREPARED UNDER THE PROVISIONS OF THE ACT OF MARCH 2, 1895.

DEPARTMENT OF THE INTERIOR,
Washington, April 1, 1896.

SIR: On the 12th ultimo the Department transmitted to Congress a "Statement of account" between the Oklahoma and the Iowa branches of the Sac and Fox of the Mississippi tribe of Indians, prepared under the provisions of the act of March 2, 1895 (28 Stat. L., 876–903), being a claim of the latter against the former for their share of the tribal annuities, moneys, etc., in which the sum of $42,893.25 was found in favor of the claimants, payable from tribal funds (Senate Doc., No. 167, Fifty-fourth Congress, first session).

In the letter of transmittal the statement was made that—

> The Oklahoma Sacs and Foxes, through their delegates, Mah ko sha toe and Moses Keokuk, also filed protest against the said finding, but have since, orally, through the delegates named, now in this city, withdrawn their objections to the aforesaid "statement of account."

I am now in receipt of a communication, dated the 23d ultimo, from the aforesaid delegates, Mah ko sha toe and Moses Keokuk, wherein they disclaim having withdrawn their protest to the finding against their branch of the tribe, or of their intention to do so, and requesting that Congress be informed of the facts, and that a mistake had been made by the Department in this respect.

In compliance with this request, a copy of their above-named letter is transmitted herewith for the information of Congress.

In regard to what might seem to be a misunderstanding on the part of the Department of the actual expression of the aforesaid delegates as to their desires and intentions relative to the protest referred to, it is proper to state that at several conferences they were understood to waive any further objections to the account in question, but still pressing their complaint that they had not been permitted to employ counsel, which they proposed to do at an expense of $2,000.

The matters at issue were carefully and fully explained to them; they were informed that the finding in favor of the Iowa branch was a binding and legal claim against their branch of the tribe, arising under the treaty with the tribe of 1867.

They were further advised, in reference to their complaint that they were not allowed to engage counsel to protect their interests before the Department against the claims of the Iowa branch, that the Department was well equipped and willing to perform that service; that the Department had found against the claimants in every instance, except in the claim arising under the treaty of 1867, against which, being an equitable, just, and legal one, requiring only the determination of the amount which was due, counsel, if employed, could have afforded them no protection, and could not have changed the result.

Very respectfully,

JNO. M. REYNOLDS,
Acting Secretary.

The PRESIDENT OF THE SENATE.

WASHINGTON, D. C., *March 23, 1896.*

SIR: On the 12th instant you transmitted to the President of the Senate a statement of the claim of the Sac and Fox Indians of the Mississippi, now residing in the State of Iowa, which statement was prepared in conformity with the provisions of the act of March 2, 1895. The last clause of your letter of transmittal is as follows:

> The Oklahoma Sacs and Foxes, through their delegates, Mah ko sha toe and Moses Keokuk, also filed protest against the said finding, but have since, orally, through the delegates named, now in this city, withdrawn their objections to the aforesaid "statement of account."

We beg to say that we never intended to withdraw our protest. You misunderstood us. We were sent by our people on purpose to protest. We would have no right to withdraw it. We did not mean to tell you that we had withdrawn it. We would not be true to our people if we acted in that way. You gave us but a few minutes to talk. Many others were waiting. We intended to ask you for a chance to be heard against the finding of your Department. We intended to ask you for the privilege of employing a lawyer, as the act provided. You have not allowed us to do so. The Iowa Sacs and Foxes had their lawyers. They had two of them, as we understand. Our people believe that this is wrong. Our people do not believe that we owe the Iowa Indians anything. The Iowa Indians have had all that was due them. They have had $100,000 more. This the Government gave them to stop their clamor. We can not understand why our people should be punished for trying to obey the laws and be good citizens. We have always been the friends of the whites. We have supported schools and churches. Our children go to Sunday school. All of our people wear the white man's dress. The Iowa Sacs and Foxes ran away from us because we wanted to adopt the white man's ways. They still wear blankets. Not many of them have houses. They refuse to send their children to school. They drink whisky and run horses.

Years ago the Secretary and the Commissioner told us that they should not have their annuities unless they came and lived with us. They were told the same thing. Yet they refused to come. And this was the way we understood the treaty. The same thing is so of Mokohoko and his band. They refused to go from Kansas to the Indian country with us. Soldiers had to take them, and then they went back. The Commissioner would not pay them their annuities. Now they are seeking to get money from us. They come to Washington with their

blankets on, and paint on their faces, and feathers in their hats. They employ lawyers. They try to get Congress to give them a large part of our money. Our people send us here to protest against both the Iowa claim and the Mokohoko claim. We would wrong our people if we did not protest. We would not dare go home. We must do our duty. We have nobody to speak for us. The Commissioner and the Secretary refuse to allow us to employ counsel. Our enemies have counsel.

We ask you to say to Congress that you made a mistake. That in our talk with you we did not withdraw our protest. That we did not mean to do so. That you did not understand us. We have been long with our people. One of our number (Keokuk) has signed many treaties for his people. They sent us here because they trusted us. They feel hurt and wounded at the treatment they have received. We ask you to do right by us, and to be as kind to us as you are to our enemies. It would not wrong the Iowa Sacs and Foxes if the whole matter waited a few weeks or a few months. You propose to take $42,000 of our money. It is a great matter. Our people are poor. They are now trying to build houses, get stock, and improve their farms. They need all their money. To take this much of their money without hearing them is wrong. Besides, the law said that we might be heard and that we might employ a lawyer. We look to you to make things right.

Yours, truly,

MAH KO SAH TOE (his x mark).
MOSES KEOKUK (his x mark).
H. C. JONES, *Interpreter.*

Hon. HOKE SMITH,
Secretary of the Interior.

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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 197.

IN THE SENATE OF THE UNITED STATES.

APRIL 6, 1896.—Referred to the Committee on Public Lands, with Senate bill 1571 and ordered to be printed.

Mr. PETTIGREW presented the following

ARGUMENT MADE BY HON. H. R. PEASE, BEFORE THE SENATE COMMITTEE ON PUBLIC LANDS, APRIL 3, 1896, RELATIVE TO THE EXISTING POLICY RESPECTING THE MANNER OF DISPOSING OF THE PUBLIC LANDS KNOWN AS THE INDIAN RESERVATION LANDS.

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: You are doubtless aware of the fact that there is a growing dissatisfaction throughout the country with the existing policy respecting the manner of disposing of the public lands known as the "Indian reservation lands," which, by treaty or purchase, have been ceded by various Indian tribes to the United States. Among the people of the West and Northwest it has assumed the proportions of popular dissent, resulting in numerous petitions from different States and Territories to Congress asking for such modification of existing statutes as will place these lands on the same footing with other public lands in respect of entry as homesteads to actual settlers.

I am informed that several bills have been introduced in the Senate at this session with a view to that end, notably Senate bill No. 1571, introduced by Mr. Pettigrew, of South Dakota. The House Committee on the Public Lands have reported in favor of the passage of several bills of this character, one of which has passed the House with no opposition. I refer to House bill No. 3656, known as the Oklahoma bill, which provides that all persons who have entered, or may hereafter enter, homesteads upon lands within that Territory acquired by treaty or purchase from various Indian tribes, may acquire title under the general homestead law, with a proviso that the settler may at his option commute his entry by paying the prices fixed by existing law.

This bill is now before your committee for consideration and report.

Mr. Chairman, with your indulgence, I will briefly discuss the present policy of disposal of these particular Indian lands, and also endeavor to present some reasons, which, if they have not the force of conclusive argument, may, I trust, be considered by the honorable committee as strongly persuasive. I assure you that I will endeavor not to trespass upon your valuable time or patience by an extended argument, which perhaps the importance of the legislation under consideration demands.

My proposition is to amend the House bill to which I have referred so as to include the Indian lands within the State of South Dakota, at least, and, as a matter of principle, should include the Indian lands of every State and Territory now opened or that may hereafter be opened to public settlement.

Mr. Chairman, the principle of public-land legislation incorporated in this bill and the amendment I propose involves no new doctrine respecting the disposition of the public domain. If enacted it will simply restore the form and purpose of statutes in force and effect for upward of half a century. In other words, it will establish the true and tried doctrine of free homes for free men on free soil, inaugurated in pursuance of the constitutional power of Congress to provide for and to promote the general welfare more than thirty years ago by the profound and patriotic statesmen of that period.

In the early history of the Government Congress, in exercising the power conferred by the Federal Constitution to dispose of and make all needful rules and regulations respecting the territory and other property of the United States, proceeded upon the theory that the public domain could be appropriated only for the direct use and benefit of the General Government, or disposed of by sale at prices fixed by the Government, the proceeds of which to be deposited in the Treasury and credited to the general fund the same as other revenue moneys. In other words, the different foreign and State cessions of territory having been paid for out of the general funds of the nation, amounting to over $86,000,000, therefore the public lands must be held in trust by the General Government as a source of revenue.

Mr. Buchanan, in his message to Congress in 1860 vetoing the first homestead bill ever passed, held that Congress had no power to dispose of the public lands by donating them to individuals or to the States for any purpose whatever.

The bill originated in the House and provided for free homesteads to actual settlers. It was amended in the Senate so as to avoid the unconstitutional feature of disposal by gift, and provided that the homestead settler must pay 25 cents an acre and prove five years' residence before aquiring title. Mr. Buchanan held that this price was a mere nominal one and practically a gift, and for these reasons he refused to approve the measure. The facts are the price provided in the bill was 500 per cent more than the cost to the Government.

We find that Congress had, prior to this declaration of the unconstitutionality of disposal of the public lands by gift to individuals or States, disposed of 30,000,000 acres in free grants to the States and Territories for educational purposes; over 8,000,000 acres to the States for internal improvements; 15,000,000 acres for military services of different individuals, and 27,000,000 acres swamp-land grants, making a total of 100,000,000 acres. This legislation was sanctioned by statesmen of the Jeffersonian faith and rigid adherents of the "strict construction" school of Democrats.

Thomas H. Benton, the great Western statesman, who measured the possibilities of American civilization with the eye of a seer, and whose glowing pictures of the development of the country west of the Mississippi River, which were regarded at the time he uttered them as Utopian, and which have been more than fulfilled, favored liberal appropriations of the public lands for the promotion of the general welfare in any practical form.

President Jackson said, in his annual message to Congress, in 1832, that—

> The wealth and strength of a country are in its population, and the best part of the population are the cultivators of the soil. Independent farmers are everywhere the basis of society and the true friends of liberty. * * * To put an end forever to all partial and interested legislation on the subject, and to afford every American citizen of enterprise the opportunity of securing an independent freehold, it seems to me, therefore, best to abandon the idea of raising a future revenue out of the public lands.

In 1852 the Free Soil Democracy declared in their platform, in convention held at Pittsburg, that "the public lands should be granted, in limited quantities, free of cost to landless settlers."

The agitation continued for a decade, in Congress and out of it. A free homestead bill passed the House of Representatives March 12, 1860, by a vote of 115 yeas to 65 nays. Mr. Andrew Johnson, then a Senator from Tennessee, offered a substitute for the House bill, requiring homestead settlers to pay 25 cents per acre after five years' residence on the land. Mr. Johnson's substitute was adopted in the Senate by a vote of 44 to 8. The House refused to concur. A committee of conference after many sittings accepted the Senate substitute. On June 23, 1860, James Buchanan vetoed the bill on the ground that it was unconstitutional. Congress failed to pass it over the President's veto. The vote in the Senate on the passage of the bill, notwithstanding the veto, stood 28 yeas to 18 nays.

A free homestead bill was again introduced in the House July 8, 1861. In February, 1862, it passed the House by a vote of 107 to 16. The bill was amended in the Senate and the disagreement of the two Houses settled by a committee of conference. On May 27, 1862, it was approved by Mr. Lincoln. For over thirty years—with some additional legislation on the same lines of policy—it was in full force, and accepted as a settled policy of administration of the public lands by all political parties.

The wisdom of the homestead act needs no apology before a committee of the American Senate.

Someone has said that "the homestead act might be appropriately styled a charter of Divine Providence." It has conserved the general welfare as no other single measure of American legislation since the formation of the National Government.

It has peopled new States, reclaimed the Western wilds, and developed in a day a moral power and material wealth that is the usual work of a generation.

It has proven a benediction to millions of homeless and landless men. It has put them in possession of a part of God's earth all their own, and constitutes a tie which binds them not only to their homes and American soil, but also to their country, her laws, and her free institutions.

It helped to make them freemen in the freest country and upon the freest soil in all the world.

It has developed in the new States and Territories, formed out of the public domain in the West and Northwest, a freedom of manhood and a magnificent manhood of freedom which entitles them to the highest rank in American progress. Under the benign policy of the homestead act they have been enabled to plant on the plains of the West and in the wilderness of the Northwest the grandest civilization since the western movement of nations began. To measure the moral and material possibilities of these public-land States and Territories would require more than mortal apprehension.

If avarice should poison the springs of national life or anarchy attempt the destruction of our republican institutions, there would go forth from these agricultural populations a moral power, and, if needed, a physical force that would rescue the Republic and purge the nation as with fire.

It is therefore wise statesmanship to foster the growth and prosperity of such communities. Mr. Chairman, a departure from this wise and beneficient policy is of recent date, and was inaugurated as a perma-

nent feature of national legislation respecting Indian lands only a few years ago. It originated largely in pursuance of what, permit me to say, is at least an anomalous policy in the administration of Indian affairs. I refer to the acts of 1891 and subsequent acts respecting the disposition of the unallotted lands of Indian reservations, acquired by treaty or purchase from various Indian tribes within the States and Territories of the West. It was perhaps partly due to the attempted revival of the heretical doctrine announced by Mr. Buchanan in 1860, to which I have referred.

Mr. Holman, a Representative from Indiana, was, as I am informed, the principal promoter of the scheme to reinaugurate the policy of making the public lands a source of revenue and reimbursement of the Treasury for moneys appropriated or obligations assumed by the Government in the extinguishment of Indian titles. Mr. Holman acquired the reputation of being the most parsimonious statesman of his time. He held that Congress had no right to dispose of these Indian lands free of cost for the benefit of homestead settlers. It was a revival of the Bourbon statesmanship of the Buchanan school. Congress, in a spasm of economy, adopted this departure from the long-established doctrine of free homes for free men upon the public lands.

In the early history of the administration of Indian affairs the aboriginal title by occupancy was extinguished by compelling the Indians to vacate extensive areas of territory, after costly wars and under treaties of peace, the terms of which were dictated by the Government—and not infrequently violated by the Government. No thought entered the minds of the statesmen of that period to apportion the expenses of these wars by levying an assessment upon the lands thus obtained. Later on large areas of territory, occupied by the nation's wards for hunting grounds, were relinquished by them in modo et forma of solemn convention, as with the most favored nations.

The consideration for these Indian grants was the payment of large annuities in money, food, clothing, and instruction; also extensive tracts of the public domain which had been purchased from France and Mexico were reserved for their exclusive use. The lands vacated were opened for free homestead settlement, and the States within which they were located thus became the special beneficiaries; notably the States of Michigan, Wisconsin, Minnesota, Iowa, Kansas, Nebraska, Mississippi, Alabama, and Arkansas.

No levies were made upon the States or homestead settlers for the cost of extinguishing the aboriginal title to these lands, the cost of which amounted to nearly $40,000,000.

In 1888 the Government purchased from the Blackfeet and Gros Ventre tribes of Indians in Montana 17,577,600 acres and paid $4,300,000, and 2,000,000 acres from the Muscogee and Seminole Indians in Oklahoma, March 20, 1889, costing $2,000,000, also 1,553,390 acres purchased from the Crow tribe in Montana in 1882, at a cost of about $1,000,000, aggregating 21,130,990 acres, costing the Government $7,300,000 and paid out of the general funds in the Treasury. All of these lands are opened to settlement, and little may be acquired by proof of five years' residence and the payment of the usual fees for entry. But under the acts of 1891, 1893, 1894, and 1895 the settlers are required, in addition to the general terms of the homestead act, to pay for their entries at prices fixed by the Government under varied terms of payment, the prices ranging from $1.25 to $3.75 per acre.

Thus is shown the anomalous character of the administration of the *Indian lands.* Large areas are open to free homestead settlement and

still larger tracts recently opened to public settlement must be bought by the settler.

The following statement shows the prices per acre and the terms of payment:

Sac and Fox and Iowa lands subject to disposal under section 7 of the act of February 13, 1891 (26 Stat. L., 759), which provides that each homestead settler before receiving a patent shall pay $1.25 per acre for the land taken by him.

Absentee Shawnee, Pottawatomie, and Cheyenne and Arapahoe lands, subject to disposal under section 16 of the act of March 3, 1891 (26 Stat. L., 1026), which provides that each homestead settler shall pay $1.50 per acre for the land taken by him.

Kickapoo lands, subject to disposal under section 3 of the act of March 3, 1893 (27 Stat. L., 563), which requires each homestead settler to pay $1.50 per acre for the land settled upon.

Cherokee Outlet lands, subject to disposal under section 10 of the act of March 3, 1893 (27 Stat. L., 640), which requires each settler, before receiving a patent, to pay the sum of $2.50 per acre for any land east of 97½° west longitude, $1.50 per acre for any land between 97½° and 98½° west longitude, and $1 per acre for any land west of 98½° west longitude, and interest upon the amount so to be paid for said lands from the date of entry to the date of final payment at the rate of 4 per cent per annum.

Tonkawa and Pawnee lands subject to disposal under section 13 of the act of March 3, 1893 (27 Stat. L., 644), which provides that each settler shall pay $2.50 per acre for the land taken by him, and interest upon the amount to be paid from the date of entry to the date of final payment at the rate of 4 per cent per annum.

Wichita lands, which, when opened to settlement, will be subject to disposal under the act of March 2, 1895 (28 Stat. L., 897), which requires each homestead entryman to pay $1.25 per acre for the land entered at the time of submitting his final proof. This act further provides that the money received from the sales of Wichita lands shall be deposited in the Treasury subject to the judgment of the Court of Claims in a suit authorized to be brought by the Wichita Indians against the United States for the purpose of determining the amount, if any, which they are entitled to receive for the relinquishment of their lands.

The lands referred to constitute the greater part of Oklahoma Territory, all of the lands in which that are now open to homestead entry having been acquired by treaty with various Indian tribes, except what is known as the "public-land strip," now embraced in Beaver County.

The following summary statement shows the number of acres purchased from the various Indian tribes since 1891, price per acre, and the amount of money levied upon the lands:

Reservation.	Area ceded, exclusive of allotted and reserved.	Price to be paid by settlers.	Amount that will be received from settlers under existing law.
	Acres.		
Cherokee Outlet, Oklahoma	732,280	$2.50	$1,830,700
	1,822,240	1.50	2,733,360
	2,806,350	1.00	2,806,350
Pawnee, Oklahoma	169,320	2.50	423,300
Tonkawa, Oklahoma	68,950	2.50	172,375
Sac and Fox, Oklahoma	364,530	1.25	455,[illegible]

Reservation.	Area ceded, exclusive of allotted and reserved.	Price to be paid by settlers.	Amount that will be received from settlers under existing law.
	Acres.		
Iowa, Oklahoma	207,028	$1.25	$258,785
Pottawatomie, Oklahoma	256,896	1.50	385,344
Cheyenne and Arapahoe, Oklahoma	3,500,562	1.50	5,250,843
Kickapoo, Oklahoma	85,000	1.50	127,500
Wichita, Oklahoma	491,388	1.25	614,235
Total in Oklahoma			15,058,462
Chippewa, Minnesota	3,822,936	1.25	4,153,670
Great Sioux, North Dakota, South Dakota, and Nebraska	554,864	1.25	693,580
	177,048	.75	132,786
	7,819,026	.50	3,909,513
			4,735,879
Lake Traverse, North Dakota and South Dakota	573,882	2.50	1,434,705
Yankton, South Dakota	151,692	3.75	568,845
Fort Berthold, North Dakota	1,838,720	1.50	2,758,080
Cœur d'Alene, Idaho	174,690	1.50	262,035
Nez Perce, Idaho	500,556	3.75	1,877,085
Colville, Washington	1,416,668	1.50	2,125,002
Crow, Montana	1,700,000	1.50	2,550,000
Siletz, Oregon	177,000	1.50	265,500
Total	28,888,712		35,847,760

The $35,847,760 to be received is an overestimate, because a large per cent of the lands are worthless for agricultural purposes.

The original public domain of the United States amounted to 1,815,000,000 acres, and cost the Government up to 1880, including over $40,000,000 for extinguishing Indian titles, $88,157,389, an average of less than 5 cents per acre.

The receipts from the sales and other disposal of the public domain, including grants to the new States for educational and other purposes, up to 1880, amounted to $200,702,849.

There are over 600,000,000 acres of public land unappropriated, including the lands the Indian title to which has been extinguished. Immense areas consisting of mountainous and arid lands are worthless for cultivation.

The following statement shows the cost of the different purchases from foreign nations, State cessions, and extinguishment of Indian titles:

Purchased from France in 1803	$15,000,000
Purchased from Spain in 1819	5,000,000
The Georgia cession of Alabama and Mississippi	5,961,819
Purchase from Mexico of New Mexico and California in 1848	15,000,000
The Texas cession in 1850	10,000,000
The Gadsden purchase in 1853	10,000,000
The Alaskan purchase in 1867	7,200,000
The extinguishment of Indian titles	40,000,000

American statesmanship thirty years ago, respecting needful rules and regulations for the disposal of the territory and other property of the United States, was comprehensive enough to measure questions of internal policy in the light of the general welfare, and not on lines of a parsimonious economy. The great statesmen of that period, irrespective of party affiliations, and in the shadow of internecine war, did not pause to consider the cost of the public domain, or whether the lands of the Gadsden purchase cost the Government 30 cents more *per acre* than the 8,000,000 acres, or 400 townships, of public land in

Iowa, then unappropriated, but offered a freehold to any actual settler upon any of the public agricultural lands wherever located free of cost. Why should we longer tolerate a departure from this wise and beneficent policy, a departure inaugurated in times of peace and unparalleled prosperity and upon the theory that the Indian reservation lands cost $1 more per acre than other public lands?

Mr. Chairman, the prices paid by the Government for these Indian lands are largely in excess of their actual value. Under the new reimbursement policy the settlers are required to pay from $200 to $600 for their homesteads. The Government practically takes a mortgage on their homesteads for the amount of the excessive purchase price, to run for a period of five years. A failure on the part of the mortgagor settler to make payment according to the terms of the mortgage contract works a forfeiture of his homestead and improvements, with no right of redemption; and besides he is forever thereafter disqualified to exercise the privilege of homestead entry upon any public land.

It appears to me, Mr. Chairman, that this policy practically creates a kind of endowment fund, to be held in trust by the Government for the benefit of the Indians, and at the expense of the poor pioneer settlers.

If the policy of creating an endowment fund for educating and civilizing the Indians is practical statesmanship—and I am not prepared to say that it is not—why not appropriate the money directly from the Treasury and not resort to the inequitable and unwarranted discrimination against some of the Western States and Territories by an assessment upon the homes of their citizens. As a matter of fact, Mr. Chairman, the settlers on these Indian reservation lands have already paid into the United States Treasury more than the lands were fairly worth when they entered them. The settlers in South Dakota and Oklahoma have already paid in fees and purchase money, under the commutation clause of existing law, at least $5,000,000. And if they are allowed to obtain title under the general homestead law, with the proviso that they may commute at their option, several millions more will be paid into the Treasury.

Mr. Chairman, I desire to call the attention of the committee to another feature of this discriminating Indian policy. The principal purpose of the allotment law of 1887 was to promote the civilization of the Indians. By giving them their lands in severalty, it was thought that it would tend to induce them to adopt agricultural habits, and in the end render them self-supporting. It was also intended to open up the unallotted lands to white settlement, and by thus mingling the races, to advance the civilization of the Indians, so that in carrying out this intendment of the law, every settler upon these Indian reservations practically becomes an agent of the Government for carrying forward the scheme of elevating and advancing the Indians, by becoming an object lesson of civilization, and at a sacrifice of his social comforts.

To be compelled to mingle with savages is far from a desirable association. It is a hardship unknown to the homestead settlers in more favored States. Besides there are imposed upon these settlers extra burdens of taxation for the support of their local governments, for by the terms of existing law the lands allotted to the Indians—and they are, as a rule, the best lands—are exempt from taxation for a quarter of a century. These settlers also contribute their share of the indirect taxation of the Government to raise the revenue appropriated to pay the Indians for their lands and the interest on obligations assumed by the Government and unpaid.

There is no reason why the settlers on the public lands in Iowa, Kansas, Nebraska, and other States should be allowed to obtain homesteads free of cost that does not apply with even greater force to the settlers upon the Indian lands in South Dakota and Oklahoma in releasing them from their homestead contracts with the Government and allowing them to obtain freeholds without cost.

There are other considerations in favor of the passage of this bill, with the amendment proposed, which I will not detain the committee to discuss. There are 25,000 Indians in South Dakota. The State will, sooner or later, have to assume the grave responsibility of civilizing and governing this large and increasing Indian population.

It will require a hundred years to bring this aboriginal population to a state of civilization where they will be able to contribute their share of the moral and material forces essential to the prosperity and safety of the State or assume their share of the burdens of government.

The same is true of every State and Territory containing an Indian population.

Upon every principle of equality of rights and privileges of States and persons in their relation to the Federal Government, respecting the benefits of national legislation, the State of South Dakota and the Territory of Oklahoma and their people are entitled to all and equal benefits accorded to other States of the Union containing public lands in the disposition of such lands. In equity, if there is to be any discrimination in national legislation it should, under the circumstances, be in their favor and not against them.

Mr. Chairman, the class of legislation under consideration demands the dispassionate judgment of this committee of the American Senate. It involves a principle of legislation which has for more than thirty-five years received the unqualified sanction of the greatest American statesmen, living and dead, and has been accepted by the people of the nation as an American doctrine.

If the policy of the free homestead act is wise and just, the proposition of legislation contained in this bill and the amendment proposed is one of degree and not of principle.

The only argument that can be urged against it is that the public lands acquired by cession from the Indians cost the Government more than other public lands, and that in order to meet the obligations incurred by contracts made with the Indians Congress will have to make large appropriations of the public moneys. I find from a careful estimate that it will not exceed $15,000,000 or $20,000,000, and would extend over a period of ten or twelve years. My estimate is based upon the reasonable probabilities of the amount that would be paid by the settlers, under the commutation clause of the bill, within the next ten years.

The proposition to release the settlers who have already acquired homestead entries from further payment under their contracts with the Government is certainly a reasonable one.

Only a small per cent of them will be able to meet their obligations in the next three or five years. A large majority of them are poor men. To pay their taxes, make needful improvements, and subsist their families is all they can possibly do. Besides, what with loss of crops from drought and the present low prices for all farm products, they are utterly bankrupt, at least a majority of them.

I received a letter from one of the most enterprising farmers on the Sisseton Reservation, in South Dakota, a few days since, in which he says:

Unless the Government releases me from paying for my land I shall be obliged to *abandon my* farm and all my improvements.

Such is the condition of two-thirds of the four thousand homestead settlers upon the lands of that reservation, notwithstanding the fact that these Sisseton or Lake Traverse lands are the best adapted for general farming of any lands in the Northwest. Unless the relief which I have proposed is granted by this Congress there will be great suffering among these most deserving people.

Mr. Chairman, there is one point which I observe I have neglected to notice, and that is the loss to the Government, which I find is represented by the Honorable Secretary of the Interior to be $35,000,000 in the event of the repeal of the existing law. I find upon examination of this report that the Honorable Secretary has estimated the loss upon a valuation per acre upon every acre included in these Indian grants. The facts are, that a large portion of these lands are unfit for farming purposes, and large areas are only fit for grazing purposes, and under the homestead entry feature of the law it would be unprofitable and wholly impracticable for general stock farming on small tracts of 160 acres. The Government therefore would not be able to dispose of these grazing and arid lands, which the Honorable Secretary includes in his estimates at all at any price. He makes no allowance for lands already paid for, and which will be commuted within the next five years.

I find from an examination of the public land reports that the average commutations of homestead entries in the past has been one-fifth of the whole number of such entries.

In conclusion, Mr. Chairman, permit me to say that, in my judgment, the proper thing to do would be for the committee to substitute the Pettigrew bill, No. 1571, for the Oklahoma bill. The Pettigrew bill provides for free homestead entries upon all lands obtained by treaty or purchase from the Indians.

But if this honorable committee should conclude that it is best to amend the Oklahoma bill as I propose, and provide for other States hereafter, it will be satisfactory to the people I represent. But to pass the Oklahoma bill without the amendment I have suggested would be a most unwarrantable discrimination against the settlers upon the Indian lands in South Dakota.

The committee will please observe that the propositions I have presented contain no provisions for repayment of moneys already paid by the settlers who have commuted their homestead entries. I do not think it should be done. They have exercised an option of purchase rather than to comply with the five years' residence before acquiring title. There are other considerations which I would like to have discussed, but I forbear lest I worry your patience.

Allow me, Mr. Chairman and gentlemen of the committee, to thank you for the courtesy you have extended to me, and particularly for the patient hearing you have given to my very desultory remarks.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 198.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1896.—Referred to the Committee on Appropriations and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ACTING SECRETARY OF THE TREASURY, TRANSMITTING COMMUNICATION FROM THE ACTING SECRETARY OF THE INTERIOR, RECOMMENDING THE REAPPROPRIATION OF THE SUM OF $1,000 APPROPRIATED BY THE SUNDRY CIVIL ACT OF AUGUST 18, 1894 (28 STAT. L., PP. 422, 423) FOR "EXAMINATION OF DESERT LANDS."

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., April 7, 1896.

SIR: I have the honor to transmit herewith, for the consideration of Congress, a communication from the Secretary of the Interior, of this date, recommending the insertion in the sundry civil bill now pending of the following clause reappropriating the sum of $1,000 appropriated by the sundry civil act of August 18, 1894 (28 Stat. L., pp. 422, 423), for "examination of desert lands," viz:

That the sum of $1,000 appropriated by the sundry civil act of August 18, 1894, to enable the Secretary of the Interior to examine the desert lands selected by the States under the provisions of section 4 of said act (28 Stat. L., 422) be, and is hereby, reappropriated and made available for the examination of said lands during the fiscal years of 1896 and 1897.

Respectfully, yours,

C. S. HAMLIN, *Acting Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 6, 1896.

SIR: I have the honor to invite your attention to the act of August 18, 1894, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes." Section 4 of said act (28 Stat. L., 422) authorizes the Secretary of the Interior, with the approval of the President, to contract and agree, upon proper application of the State and under certain conditions, to patent to each of the States in which there may be situated desert land as defined by

the act entitled "An act to provide for the sale of desert land in certain States and Territories," approved March 3, 1877, and the act amendatory thereof, approved March 3, 1891, not to exceed 1,000,000 acres of such lands in each State as the State may cause to be irrigated and reclaimed.

It is also provided in said section 4—

That to enable the Secretary of the Interior to examine any of the lands that may be selected under the provisions of this section there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, one thousand dollars.

Said appropriation of $1,000, referred to above, was treated by the Secretary of the Treasury as an annual appropriation, and was placed upon the books of the Treasury Department as such under the fiscal year of 1895. Such being the case the same can only be drawn against in payment of service performed during said year.

In connection therewith you are informed that no expenses pertaining to the examination of said lands were incurred during the fiscal year of 1895, as the conditions prescribed in the act in order for the States to secure land thereunder had not been complied with by the States during said year. Expenses have, however, been incurred under said appropriation during the present fiscal year, and in order to meet the same I respectfully recommend that the honorable chairman of the Senate Committee on Appropriations be requested to insert in the bill making appropriations for the sundry civil expenses of the Government for the fiscal year of 1897 the following provision:

That the sum of $1,000 appropriated by the sundry civil act of August 18, 1894, to enable the Secretary of the Interior to examine the desert lands selected by the States under the provisions of section 4 of said act (28 Stat. L., 422) be, and is hereby, reappropriated and made available for the examination of said lands during the fiscal years of 1896 and 1897.

Very respectfully,

S. W. LAMOREUX, *Commissioner.*

The SECRETARY OF THE INTERIOR.

[Indorsement.]

DEPARTMENT OF INTERIOR, *April 7, 1896.*

Respectfully forwarded through the Honorable Secretary of the Treasury for the favorable consideration of Congress.

JNO. M. REYNOLDS, *Acting Secretary.*

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 199.

IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1896.—Referred to the Committee on Commerce and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ATTORNEY-GENERAL IN FURTHER COMPLIANCE WITH THE RESOLUTION OF THE SENATE OF MARCH 16, 1896, CALLING FOR ADVICE TOUCHING THE MATTER OF THE CONDEMNATION OF LANDS NEEDED FOR THE CONSTRUCTION OF THE PROPOSED BOAT RAILWAY AT THE DALLES OF THE COLUMBIA RIVER, IN OREGON.

DEPARTMENT OF JUSTICE,
Washington, D. C., April 7, 1896.

SIR: In further compliance with the resolution of the Senate passed on the 16th ultimo, calling for advice touching the matter of the condemnation of lands needed for the construction of the proposed boat railway at The Dalles of the Columbia River, in Oregon, I have the honor to transmit to you herewith a copy of a letter just received from the United States attorney for the district of Oregon, dated the 30th ultimo, which relates to the same matter and contains information additional to what was furnished by my letter addressed to you under date of the 17th ultimo.

I am, sir, very respectfully,

JUDSON HARMON,
Attorney-General.

The PRESIDENT OF THE SENATE.

OFFICE UNITED STATES ATTORNEY,
DISTRICT OF OREGON,
Portland, March 30, 1896.

SIR: Replying to yours of March 12, 1896 (A. J. B., F., 6008, 1895), relative to the boat railway at The Dalles rapids of the Columbia River, I have to say that Captain Fisk, United States engineer in charge, is still negotiating with the owners of the land and has not reported to me any suits for prosecution. He states to me that he has $75,000 still untouched for the purpose of securing the right of way, and that in all probability said sum will be sufficient to pay all expenses incident to procuring the right of way, and that it will not be necessary to appropriate any further money for such purposes. He further states to me that he will be in position in a few days to report to me such lands as should be condemned, in which event the trials can be terminated before June 30.

Respectfully, yours,

DANIEL R. MURPHY,
United States Attorney.

Hon. JUDSON HARMON,
Attorney-General, Washington, D. C.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 200.

IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1896.—Referred to the Committee on Appropriations and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ACTING SECRETARY OF THE TREASURY, TRANSMITTING AN ESTIMATE OF APPROPRIATION ($40,000) TO PAY AMOUNTS FOUND TO BE DUE UNDER CONTRACTS FOR THE SURVEY OF PUBLIC LANDS IN CALIFORNIA EXECUTED PRIOR TO JUNE 30, 1890.

TREASURY DEPARTMENT, *April 7, 1896.*

SIR: I have the honor to transmit herewith, for the consideration of Congress, an estimate of appropriation ($40,000) to pay amounts found to be due under contracts for the survey of public lands in California executed prior to June 30, 1890, as submitted by the Secretary of the Interior, under date of the 4th instant.

Respectfully, yours,

C. S. HAMLIN,
Acting Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 2, 1896.

SIR: In the matter of certain contracts executed in the years 1883 to 1885 for surveys in the State of California, and in which the surveys made under the contract were rejected by the Commissioner of the General Land Office, a proposition for compromise was submitted by the contractors and approved by the Department of the Interior and the Department of Justice. This compromise agreement provided in substance, that the said contractors should again go over the lines of the surveys involved, correct, complete, and perfect the same according to law and instructions, all in strict accordance with the terms of the contracts, the Manual of Surveying Instructions (at that time in force), and such special instructions as may have been issued by the surveyor-general of California. These corrected surveys, or resurveys, were to be subject to a rigid and careful examination by a competent and trusted employee of the Department of the Interior. The returns of the surveys so corrected or resurveyed were to be submitted to the surveyor-general of California for his action, and when approved by the Commissioner of the General Land Office the accounts for surveys were to be adjusted and paid.

Some of the contracts referred to are payable from the appropriation for the survey of public lands and others from deposits by individuals. In the former case the appropriation has long since lapsed, and in the latter the deposits, in some instances at least, are insufficient.

I am unable to accurately estimate the amount necessary to pay for the surveys under the contracts referred to, but I respectfully recommend that a provision be inserted in the sundry civil bill for the fiscal year 1897 appropriating the sum of $40,000 to pay amounts found to be due under such contracts.

I respectfully suggest that the following as a proviso in connection with appropriation for the survey of public lands would be sufficient:

Provided further, That in the case of contracts for the survey of public lands in the State of California executed prior to June 30, 1890, in which the returns of the survey have been suspended by the Commissioner of the General Land Office until the appropriation for the survey of public lands from which the contracts for such surveys were made payable has lapsed and been covered into the Treasury, and in which cases such suspension is afterwards removed and the surveys executed under such contracts accepted by the Commissioner of the General Land Office, or in the case of such contracts when made payable from the fund of deposits by individuals for the survey of public lands in which the deposits made for the particular survey are insufficient; to pay the amounts found to be due under such contracts and at the rates named therein, there is hereby appropriated, from any moneys in the Treasury not otherwise appropriated, the sum of forty thousand dollars.

Very respectfully,

S. W. LAMOREUX, *Commissioner.*

Hon. WM. B. ALLISON,
Chairman Committee on Appropriations, United States Senate.

DEPARTMENT OF THE INTERIOR,
April 4, 1896.

Approved, and respectfully forwarded through the Honorable Secretary of the Treasury for the favorable consideration of Congress.

JNO. M. REYNOLDS,
Acting Secretary.

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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 201.

IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1896.—Referred to the Committee on Public Lands, with S. 2770, and ordered to be printed.

Mr. PERKINS presented the following

MEMORIAL WITH REFERENCE TO BILL FOR GRANT OF A RIGHT OF WAY FOR A RAILROAD FROM THE CITY OF MERCED TO THE CASCADES ON THE MERCED RIVER, ABOUT ONE-HALF MILE FROM THE ENTRANCE TO THE YOSEMITE VALLEY, IN THE STATE OF CALIFORNIA.

To the Senate and House of Representatives of the United States of America in Congress assembled:

Your memorialists respectfully show, that they have projected and contemplate constructing, subject to the obtaining of the necessary right of way, a steam railroad, leaving the city of Merced, in the State of California, and running northeasterly through the San Joaquin Valley to a point where the Merced River debouches from the Sierra Nevada Mountains into the plains of the San Joaquin, and thence following generally the bed of the Merced River to a point known as The Cascades, on the Merced River, about one-half mile from the entrance to the Yosemite Valley.

No right of way is sought in the valley, and none is covered by the provisions of this bill.

The distance of the road as located is about 82 miles, and the estimated cost of construction is about $1,500,000.

The incorporators are all residents of and men engaged and doing business in the city and county of San Francisco, State of California, and your memorialists believe that such railroad would not only be of great benefit to the development of the vast agricultural, mining, and timber interests which would be relieved by the transportation afforded by the construction of this line, but that the transportation of passengers to the Yosemite Valley, which justly ranks as one of the scenic wonders of the world, would be so great that the enterprise is one which commends itself to the business judgment of the projectors.

The distance through the reservation sought by this bill is approximately 16 miles. About one-half of the land, however, at the time of the passage of the act withdrawing the same from sale had already been patented and is now held in private ownership, so that the actual length of right of way over Government land does not exceed 8 miles, and this through a territory which by reason of its inaccessibility is to-day of no practical value for any purpose.

The engineering necessities require the construction of the road along the bed of the Merced River, with only a sufficient elevation to escape the high waters of the flood season, and as a consequence, confined as it will be to the narrow gorge of the river, there is no danger whatever to be apprehended from forest fires, nor is there any appreciable appropriation of the public domain.

JAMES B. STETSON.
JOHN D. SPRECKELS.
ROBT. DANARD.
O. D. BALDWIN.
JAMES CROSS.
ALBERT L. STETSON.
G. A. WALKER, Jr.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 202.

IN THE SENATE OF THE UNITED STATES.

APRIL 9, 1896.—Laid on the table and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ATTORNEY-GENERAL IN RESPONSE TO SENATE RESOLUTION OF JANUARY 13, 1896, RELATIVE TO JAILS IN THE INDIAN TERRITORY.

DEPARTMENT OF JUSTICE,
Washington, D. C., April 7, 1896.

SIR: In response to the resolution of the Senate dated January 13, 1896, relative to jails in the Indian Territory, I submit herewith copies of letters sent by the United States marshals for the three districts of the Indian Territory answering some of the inquiries in said resolution. I also have the honor to inclose a copy of a report made by Mr. Howard Perry, of this Department, of his recent examination of the jails in the Indian Territory.

Very respectfully,

JUDSON HARMON,
Attorney-General.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 3, 1896.

SIR: During my investigations in the Indian Territory I gave the subject of jails careful consideration.

I do not see the necessity of building a jail at each one of the thirteen places where court is held in the Indian Territory. I am positively convinced that there should be for each district a first-class jail, capable of accommodating at least 150 prisoners, and it would seem proper that these jails should be located at the headquarters in each district, namely: Muscogee, South McAlester, and Ardmore.

As will be noted from my report on the jails at each of these places, they are absolutely unfit for the safe custody of prisoners and are a disgrace to the United States Government. It is a wonder that more escapes do not occur, and I would not be surprised at any time to hear of an outbreak similar to the one that recently occurred at South McAlester, when 26 prisoners escaped from the jail, according to the report of the marshal. It is only the vigilance of the guards and the ever-present Winchester that keep the prisoners in submission.

Under the act of March 1, 1895, full jurisdiction will be given to the courts in the Indian Territory on the 1st of September next, and the class of prisoners that will then be committed will be similar to those now confined at Fort Smith and Paris, probably the most desperate criminals in the country. Under the present condition of land tenures,

etc., in the Indian Territory, it would perhaps be unwise for the Government to await the long delays incident to the erection of a Government jail at each of the places above mentioned through the action of Congress.

Mr. Turner, at Muscogee; Mr. Jackson, at South McAlester, and Wolverton & Jamison, at Ardmore, will be willing to erect such jails as the Department may approve, the rent being conditional upon the amount of outlay involved in their construction. In fact, I had positive assurances from Mr. Turner and Mr. Jackson, at Muscogee and South McAlester, that they were willing to deal with the Department upon the lines above suggested, and I believe that Wolverton & Jamison, of Ardmore, their proposition for the building of a court-house having been accepted, will do the same. A telegram from Judge Kilgore states that sufficient ground in the rear of the court-house can be controlled for the jail.

I have taken the pains to ask the Paully Company, at St. Louis, to give me a sketch of what they would consider a suitable jail for the accommodation of 150 prisoners, containing two blocks of cells and over the front offices two cells for the accommodation of women and two that could be used for hospital purposes, and the plan which they kindly have drawn for me I submit herewith, and suggest that when jails are built at the three places mentioned they be upon this order. The Paully Company state that jails of this character will cost in the neighborhood of $30,000 each.

It appears to me to be entirely useless to build at the other places where courts are held in the Indian Territory anything except what might be termed "hold overs." The distances to South McAlester, Muscogee, and Ardmore are so near that it would not justify the Department, in my opinion, in carrying on a complete jail establishment at each of these places. It would be unwise to build at these points the kind of jails that will be absolutely required, as the expense of transporting the prisoners when they are committed to Muscogee, South McAlester, and Ardmore would, in my opinion, be considerably less than that of keeping up a separate establishment at each of these places, and I therefore think that the proposition to build three first-class jails should be adopted.

While in the Territory I talked with the officials, and my plan seemed to meet their approval. We already have small jails at Pauls Valley, Purcell, Chickasha, Ryan, and Antlers. These I do not think should be used except for the temporary confinement of prisoners, and the marshals should be instructed to employ a jailer and guard only when prisoners are confined therein. One jailer, who should be on duty during the daytime, and a night guard, is all the force that is necessary. The jailer should be paid, in my opinion, $3 per day, and the night guard $2 per night.

The cost of feeding prisoners should not be greater, taking all things into consideration, at one point than another, and therefore after carefully considering the matter I recommend that a uniform per diem of 30 cents be allowed for feeding prisoners in the Indian Territory.

In view of the considerations above named, I earnestly recommend that the United States marshals for the northern, central, and southern districts be directed to immediately communicate with Messrs. Turner, Jackson, and Wolverton & Jamison and request them to submit propositions for the rent of a jail for a term of years at Muscogee, South McAlester, and Ardmore.

I also suggest that a provision be made in said contract that the Gov-

ernment can purchase the jail at any time, if so desired, the purchase price to be fixed in said contract.

This matter should receive immediate attention, as it is absolutely necessary that a proper jail be obtained without delay at each of the points named.

Respectfully submitted, HOWARD PERRY.

The ATTORNEY-GENERAL.

OFFICE OF THE UNITED STATES MARSHAL,
South McAlester, Ind. T., January 17, 1896.

SIR: Replying to your letter of the 14th instant (F. S. 741), I beg to say that we have the following prisoners in the jail at this place:

Larceny	19
Malicious mischief	1
Introducing liquor into the Indian country	2
Sodomy	1
Forgery	2
Disposing of mortgaged property	1
Embezzlement	1
Total	27

This jail will accommodate about 100 prisoners. There have been confined in this jail as many as 150 prisoners. The only other jail is at Antlers. As yet I am not advised that a lease has been approved for the renting of the same, although the Department has advised me to use the same when necessary. At present there are no prisoners in the jail. It will accommodate about 65 prisoners.

Respectfully,

J. J. MCALESTER, *Marshal.*

The ATTORNEY-GENERAL,
Washington, D. C.

OFFICE OF THE UNITED STATES MARSHAL,
Muscogee, Ind. T., January 18, 1896.

SIR: Referring to your letter of January 14, I have the honor to say: As you are doubtless aware, we have only one jail of any description in the northwest district, which is situated at Muscogee. It has a capacity—when comfort or convenience is not taken into consideraton—of about 150 men.

A description of this jail, giving dimensions of jail, jail yard, and guardhouse, was given Major Chalmers when here. We have now confined in the jail here the following number of prisoners for the different offenses as enumerated below:

Larceny	51	Aggravated assault	1
Introducing and selling liquor	19	Slander	1
Wearing weapons	5	Riot	1
Assault and battery	3	Gaming	2
Forgery	3	Keeping house of ill fame	2
Assault to rape	1	False pretenses	2
Embezzlement	2	Timber depredation	1
Burglary	2	Disturb peace	5

Making in all a total of 101 prisoners confined for all offenses.

Very respectfully,

S. M. RUTHERFORD,
United States Marshal.

ATTORNEY-GENERAL, *Washington, D. C.*

OFFICE OF THE UNITED STATES MARSHAL,
Ardmore, Ind. T., January 20, 1896.

SIR: In reply to your letter of the 14th instant, I submit the following:

Attached list shows names and offenses of all prisoners confined at Ardmore at this date.

Attached letter also gives names and offenses of all prisoners confined at Ryan at this date.

These are only two jails regularly used, with officers in charge.

The jails at Chickasha, Purcell, and Pauls Valley have no jail officers, deputy marshals using them in emergencies.

Jail capacity at—

Ardmore	65
Ryan	20
Chickasha	20
Purcell	20
Pauls Valley	20
Total	145

Respectfully,

C. L. STOWE,
United States Marshal.

The ATTORNEY-GENERAL,
Washington, D. C.

Report of prisoners now confined in the United States jail at Ardmore, Ind. T., on January 17, 1896.

James Murphy, larceny; J. M. Looney, larceny; Allen Rickets, larceny; George Gains, larceny; Jim Noah, larceny; Quincy Bates, larceny; J. C. Brewer, larceny; Sam R. Smith, larceny; Lee F. Bedford, larceny; Robert Johnson, larceny; Baxter Odum, larceny; Frank Dykes, maintaining nuisance; L. W. Billings, false pretense and fraud; Nicholas Perkins, false pretense; R. Lane Burnett, false pretense; William Henderson, alias McCarthy, forgery; Dan Welch, larceny; Major Tate, larceny; Oscar Tetter, larceny; Julius Donahoe, larceny; Walter McCook, fraud; Henry Colbert, larceny; Jessie Miles, larceny; Robert Nero, weapon; John West, weapon; Oim Rhodes, weapon; Rufus Edmonds, selling intoxicating liquor; Sam Ogle, larceny; Jack Wyles, disturbing peace; George Rolin, introducing and selling; J. T. Davis, false pretense. Total number in jail at this date, 32 prisoners.

RYAN, IND. T., *January 18, 1896.*

DEAR SIR: We have in jail two prisoners, viz: Jim Johnson, charged with larceny, and Joe Cox, larceny.

Very truly,

A. B. HAMM, *Deputy.*

C. L. STOWE, *United States Marshal, Ardmore, Ind. T.*

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 203.

IN THE SENATE OF THE UNITED STATES.

APRIL 9, 1896.—Referred to the Committee on Commerce and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE SECRETARY OF WAR, TRANSMITTING, IN RESPONSE TO JOINT RESOLUTION APPROVED APRIL 6, 1896, DIRECTING THE SECRETARY OF WAR TO SUBMIT ESTIMATES OF THE COST OF FURTHER IMPROVEMENT OF PROVIDENCE RIVER AND NARRAGANSETT BAY, RHODE ISLAND, REPORT FROM THE CHIEF OF ENGINEERS OF THE ARMY UPON THE SUBJECT.

WAR DEPARTMENT,
Washington, D. C., April 9, 1896.

SIR: In compliance with the requirement of public resolution No. 37, Fifty-fourth Congress, first session, entitled "Joint resolution directing the Secretary of War to submit estimates of cost of further improvement of Providence River and Narragansett Bay, Rhode Island," approved April 6, 1896, I have the honor to transmit herewith report from the Chief of Engineers of the Army, dated April 9, 1896, upon the subject.

Very respectfully,

DANIEL S. LAMONT,
Secretary of War.

The PRESIDENT OF THE UNITED STATES SENATE.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., April 9, 1896.

SIR: By the provisions of public resolution No. 37, entitled "Joint resolution directing the Secretary of War to submit estimates of cost of further improvement of Providence River and Narragansett Bay, Rhode Island," approved April 6, 1896, the Secretary of War is directed to prepare and submit estimates for the improvement of Providence River and Narragansett Bay, with a view of securing a ship channel 400 feet in width and of a depth of 25 feet at mean low water from Sassafras Point, in Providence Harbor, through Providence River and Narragansett Bay by the most direct route practicable to the ocean by way of the "Western Passage," so called.

To enable compliance with the terms of the above-mentioned resolution, I have the honor to state that the estimated cost of securing a channel of the dimensions named at the locality mentioned is $732,820.

Very respectfully, your obedient servant,

W. P. CRAIGHILL,
Brig. Gen., Chief of Engineers.

Hon. DANIEL S. LAMONT,
Secretary of War.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 204.

IN THE SENATE OF THE UNITED STATES.

APRIL 9, 1896.—Referred to the Committee on Public Lands, to accompany S. 1571, and ordered to be printed.

Mr. PETTIGREW presented the following

ARGUMENT MADE BY HON. H. R. PEASE, BEFORE THE SENATE COMMITTEE ON PUBLIC LANDS, APRIL 3, 1896, RELATIVE TO THE EXISTING POLICY RESPECTING THE MANNER OF DISPOSING OF THE PUBLIC LANDS KNOWN AS THE INDIAN RESERVATION LANDS.

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: You are doubtless aware of the fact that there is a growing dissatisfaction throughout the country with the existing policy respecting the manner of disposing of the public lands known as the "Indian reservation lands," which, by treaty or purchase, have been ceded by various Indian tribes to the United States. Among the people of the West and Northwest it has assumed the proportions of popular dissent, resulting in numerous petitions from different States and Territories to Congress asking for such modification of existing statutes as will place these lands on the same footing with other public lands in respect of entry as homesteads to actual settlers.

I am informed that several bills have been introduced in the Senate at this session with a view to that end, notably Senate bill No. 1571, introduced by Mr. Pettigrew, of South Dakota. The House Committee on the Public Lands have reported in favor of the passage of several bills of this character, one of which has passed the House with no opposition. I refer to House bill No. 3656, known as the Oklahoma bill, which provides that all persons who have entered, or may hereafter enter, homesteads upon lands within that Territory acquired by treaty or purchase from various Indian tribes, may acquire title under the general homestead law, with a proviso that the settler may at his option commute his entry by paying the prices fixed by existing law.

This bill is now before your committee for consideration and report.

Mr. Chairman, with your indulgence I will briefly discuss the present policy of disposal of these particular Indian lands, and also endeavor to present some reasons, which, if they have not the force of conclusive argument, may, I trust, be considered by the honorable committee as strongly persuasive. I assure you that I will endeavor not to trespass upon your valuable time or patience by an extended argument, which perhaps the importance of the legislation under consideration demands.

My proposition is to amend the House bill to which I have referred, so as to include the Indian lands within the State of South Dakota, at least, and, as a matter of principle, should include the Indian lands of every State and Territory now opened, or that may hereafter be opened to public settlement.

Mr. Chairman, the principle of public-land legislation incorporated in this bill and the amendment I propose involves no new doctrine respecting the disposition of the public domain. If enacted it will

simply restore the form and purpose of statutes in force and effect for upward of half a century. In other words, it will establish the true and tried doctrine of free homes for free men on free soil, inaugurated in pursuance of the constitutional power of Congress to provide for and to promote the general welfare more than thirty years ago by the profound and patriotic statesmen of that period.

In the early history of the Government, Congress, in exercising the power conferred by the Federal Constitution to dispose of and make all needful rules and regulations respecting the territory and other property of the United States, proceeded upon the theory that the public domain could be appropriated only for the direct use and benefit of the General Government, or disposed of by sale at prices fixed by the Government, the proceeds of which to be deposited in the Treasury and credited to the general fund the same as other revenue moneys. In other words, the different foreign and State cessions of territory having been paid for out of the general funds of the nation, amounting to over $86,000,000, therefore the public lands must be held in trust by the General Government as a source of revenue.

Mr. Buchanan, in his message to Congress in 1860 vetoing the first homestead bill ever passed, held that Congress had no power to dispose of the public lands by donating them to individuals or to the States for any purpose whatever.

The bill originated in the House and provided for free homesteads to actual settlers. It was amended in the Senate so as to avoid the unconstitutional feature of disposal by gift, and provided that the homestead settler must pay 25 cents an acre and prove five years' residence before acquiring title. Mr. Buchanan held that this price was a mere nominal one and practically a gift, and for these reasons he refused to approve the measure. The facts are, the price provided in the bill was 500 per cent more than the cost to the Government.

We find that Congress had, prior to this declaration of the unconstitutionality of disposal of the public lands by gift to individuals or States, disposed of 30,000,000 acres in free grants to the States and Territories for educational purposes; over 8,000,000 acres to the States for internal improvements; 15,000,000 acres for military services of different individuals, and 27,000,000 acres swamp-land grants, making a total of 100,000,000 acres. This legislation was sanctioned by statesmen of the Jeffersonian faith and rigid adherents of the "strict construction" school of Democrats.

Thomas H. Benton, the great Western statesman, who measured the possibilities of American civilization with the eye of a seer, and whose glowing pictures of the development of the country west of the Mississippi River, which were regarded at the time he uttered them as Utopian, and which have been more than fulfilled, favored liberal appropriations of the public lands for the promotion of the general welfare in any practical form.

President Jackson said, in his annual message to Congress in 1832, that—

> The wealth and strength of a country are in its population, and the best part of the population are the cultivators of the soil. Independent farmers are everywhere the basis of society and the true friends of liberty. * * * To put an end forever to all partial and interested legislation on the subject, and to afford every American citizen of enterprise the opportunity of securing an independent freehold, it seems to me, therefore, best to abandon the idea of raising a future revenue out of the public lands.

In 1852 the Free Soil Democracy declared in their platform, in convention held at Pittsburg, that "the public lands should be granted, *in limited* quantities, free of cost to landless settlers."

The agitation continued for a decade, in Congress and out of it. A free-homestead bill passed the House of Representatives March 12, 1860, by a vote of 115 yeas to 65 nays. Mr. Andrew Johnson, then a Senator from Tennessee, offered a substitute for the House bill, requiring homestead settlers to pay 25 cents per acre after five years' residence on the land. Mr. Johnson's substitute was adopted in the Senate by a vote of 44 to 8. The House refused to concur. A committee of conference after many sittings accepted the Senate substitute. On June 23, 1860, James Buchanan vetoed the bill on the ground that it was unconstitutional. Congress failed to pass it over the President's veto. The vote in the Senate on the passage of the bill, notwithstanding the veto, stood 28 yeas to 18 nays.

A free-homestead bill was again introduced in the House July 8, 1861. In February, 1862, it passed the House by a vote of 107 to 16. The bill was amended in the Senate and the disagreement of the two Houses settled by a committee of conference. On May 27, 1862, it was approved by Mr. Lincoln. For over thirty years—with some additional legislation on the same lines of policy—it was in full force, and accepted as a settled policy of administration of the public lands by all political parties.

The wisdom of the homestead act needs no apology before a committee of the American Senate.

Someone has said that "the homestead act might be appropriately styled a charter of Divine Providence." It has conserved the general welfare as no other single measure of American legislation since the formation of the National Government.

It has peopled new States, reclaimed the Western wilds, and developed in a day a moral power and material wealth that is the usual work of a generation.

It has proven a benediction to millions of homeless and landless men. It has put them in possession of a part of God's earth all their own, and constitutes a tie which binds them not only to their homes and American soil, but also to their country, her laws, and her free institutions.

It helped to make them freemen in the freest country and upon the freest soil in all the world.

It has developed in the new States and Territories, formed out of the public domain in the West and Northwest, a freedom of manhood and a magnificent manhood of freedom which entitles them to the highest rank in American progress. Under the benign policy of the homestead act they have been enabled to plant on the plains of the West and in the wilderness of the Northwest the grandest civilization since the western movement of nations began. To measure the moral and material possibilities of these public-land States and Territories would require more than mortal apprehension.

The wealth of these States and Territories, according to the national census of 1890, aggregates $21,661,686,102, as follows:

Michigan	$2,095,016,272	Montana	$453,135,209
Wisconsin	1,833,308,523	Wyoming	169,773,710
Minnesota	1,695,831,927	Colorado	1,145,712,267
Iowa	2,287,348,333	New Mexico	231,459,897
Missouri	2,397,902,945	Arizona	188,880,976
North Dakota	337,006,506	Utah	349,411,234
South Dakota	425,141,299	Nevada	180,323,668
Nebraska	1,275,685,514	Idaho	207,896,591
Kansas	1,799,343,501	Washington	760,698,726
Oklahoma	48,285,124	Oregon	500,396,194
Indian *Territory*	159,765,462	California	2,533,733,627

The peace and safety of our free institutions rest in the homes of the rural population. Agricultural and pastoral communities have always furnished the conservative and cohesive forces of society. The farmers of Auretium upheld the Roman Empire for many centuries. The small freeholders of France paid the German indemnity and await an opportunity to get it back again. If ever avarice should poison the springs of our national life, or anarchy attempt the destruction of our republican institutions, there would go forth from the agricultural populations of these public-land States and Territories a moral power, and, if needed, a physical force that would rescue the Republic and purge the nation as with fire. It is therefore wise statesmanship to foster the growth of such communities. To abandon a policy which has hitherto contributed so much to the development of the moral and material forces of these States and Territories is entirely indefensible.

Mr. Chairman, the existing laws respecting the disposal of our Indian reservation lands are, as is well known, of recent enactment. They are practically an abandonment, or, at least, a wide departure from the free homestead policy. I refer to the acts of 1891 and subsequent acts.

This departure was inaugurated in pursuance of what, permit me to say, is at least an anomalous policy in the administration of Indian affairs, so far as it relates to the disposition of the unallotted lands of the different Indian reservations acquired by treaty or purchase. It was doubtless partly due to a desire on the part of certain national legislators—I will not say statesmen—to revive the heretical doctrine announced by Mr. Buchanan in his veto message of 1860, to which I have referred.

Mr. Holman, a Representative from Indiana, was, as I am informed, the principal promoter of the scheme to reinaugurate the policy of making the public lands a source of revenue and reimbursement of the Treasury for moneys appropriated or obligations assumed by the Government in the extinguishment of Indian titles. Mr. Holman acquired the reputation of being the most parsimonious statesman of his time. He held that Congress had no right to dispose of these Indian lands free of cost for the benefit of homestead settlers. It was a revival of the Bourbon statesmanship of the Buchanan school. Congress, in a spasm of economy, adopted this departure from the long-established doctrine of free homes for free men upon the public lands.

In the early history of the administration of Indian affairs the aboriginal title by occupancy was extinguished by compelling the Indians to vacate extensive areas of territory, after costly wars and under treaties of peace, the terms of which were dictated by the Government—and not infrequently violated by the Government. No thought entered the minds of the statesmen of that period to apportion the expenses of these wars by levying an assessment upon the lands thus obtained. Later on, large areas of territory occupied by the nation's wards for hunting grounds were relinquished by them in modo et forma of solemn convention, as with the most-favored nations.

The consideration for these Indian grants was the payment of large annuities in money, food, clothing, and instruction; also extensive tracts of the public domain which had been purchased from France and Mexico were reserved for their exclusive use. The lands vacated were opened for free homestead settlement, and the States within which they were located thus became the special beneficiaries; notably, the States of Michigan, Wisconsin, Minnesota, Iowa, Kansas, Nebraska, Mississippi, Alabama, and Arkansas.

No levies were made upon the States or homestead settlers for the cost of extinguishing the aboriginal title to these lands, the cost of which amounted to nearly $40,000,000.

In 1888 the Government purchased from the Blackfeet and Gros Ventre tribes of Indians in Montana 17,577,600 acres and paid $4,300,000, and 2,000,000 acres from the Muscogee and Seminole Indians in Oklahoma, March 20, 1889, costing $2,000,000, also 1,553,390 acres purchased from the Crow tribe in Montana in 1882, at a cost of about $1,000,000, aggregating 21,130,990 acres, costing the Government $7,300,000 and paid out of the general funds in the Treasury. All of these lands are opened to settlement, and title may be acquired by proof of five years' residence and the payment of the usual fees for entry. But under the acts of 1891, 1893, 1894, and 1895 the settlers are required, in addition to the general terms of the homestead act, to pay for their entries at prices fixed by the Government under varied terms of payment, the prices ranging from $1.25 to $3.75 per acre.

Thus is shown the anomalous character of the administration of the Indian lands. Large areas are open to free homestead settlement and still larger tracts, recently opened to public settlement, must be bought by the settler.

The following statement shows the price per acre and the terms of payment.

Sac and Fox and Iowa lands subject to disposal under section 7 of the act of February 13, 1891 (26 Stat. L., 759) which provides that each homestead settler before receiving a patent shall pay $1.25 per acre for the land taken by him.

Absentee Shawnee, Pottawatomie, and Cheyenne and Arapahoe lands, subject to disposal under section 16 of the act of March 3, 1891 (26 Stat. L., 1026), which provides that each homestead settler shall pay $1.50 per acre for the land taken by him.

Kickapoo lands, subject to disposal under section 3 of the act of March 3, 1893 (27 Stat. L., 563), which requires each homestead settler to pay $1.50 per acre for the land settled upon.

Cherokee Outlet lands, subject to disposal under section 10 of the act of March 3, 1893 (27 Stat. L., 640), which requires each settler, before receiving a patent, to pay the sum of $2.50 per acre for any land east of 97½° west longitude, $1.50 per acre for any land between 97½° and 98½° west longitude, and $1 per acre for any land west of 98½° west longitude, and interest upon the amount so to be paid for said lands from the date of entry to the date of final payment at the rate of 4 per cent per annum.

Tonkawa and Pawnee lands subject to disposal under section 13 of the act of March 3, 1893 (27 Stat. L., 644), which provides that each settler shall pay $2.50 per acre for the land taken by him, and interest upon the amount to be paid from the date of entry to the date of final payment at the rate of 4 per cent per annum.

Wichita lands, which, when opened to settlement, will be subject to disposal under the act of March 2, 1895 (28 Stat. L., 897), which requires each homestead entryman to pay $1.25 per acre for the land entered at the time of submitting his final proof. This act further provides that the money received from the sales of Wichita lands shall be deposited in the Treasury subject to the judgment of the Court of Claims in a suit authorized to be brought by the Wichita Indians against the United States for the purpose of determining the amount, if any, which they are entitled to receive for the relinquishment of their lands.

The lands referred to constitute the Territory of Oklahoma, except what is known as the "Public-Land Strip."

The following summary statement shows the number of acres purchased from the various Indian tribes in 1891 and since, price per acre, and the amount of money levied upon the lands:

Reservation.	Area ceded, exclusive of allotted and reserved.	Price to be paid by settlers.	Amount that will be received from settlers under existing law.
	Acres.		
Cherokee Outlet, Oklahoma	732,280	$2.50	$1,830,700
	1,822,240	1.50	2,733,360
	2,806,350	1.00	2,806,350
Pawnee, Oklahoma	169,320	2.50	423,300
Tonkawa, Oklahoma	68,950	2.50	172,375
Sac and Fox, Oklahoma	364,536	1.25	455,670
Iowa, Oklahoma	207,028	1.25	258,785
Pottawatomie, Oklahoma	256,896	1.50	385,344
Cheyenne and Arapahoe, Oklahoma	3,500,562	1.50	5,250,843
Kickapoo, Oklahoma	85,000	1.50	127,500
Wichita, Oklahoma	491,388	1.25	614,235
Total in Oklahoma			15,058,462
Chippewa, Minnesota	3,322,936	1.25	4,153,670
Great Sioux, North Dakota, South Dakota, and Nebraska	554,864	1.25	693,580
	177,048	.75	132,786
	7,819,026	.50	3,909,513
			4,735,879
Lake Traverse, North Dakota and South Dakota	573,882	2.50	1,434,705
Yankton, South Dakota	151,692	3.75	568,845
Fort Berthold, North Dakota	1,838,720	1.50	2,758,080
Cœur d'Alene, Idaho	174,690	1.50	262,035
Nez Perce, Idaho	500,556	3.75	1,877,085
Colville, Washington	1,416,668	1.50	2,125,002
Crow, Montana	1,700,000	1.50	2,550,000
Siletz, Oregon	177,000	1.50	265,500
Total	28,888,712		35,847,760

The $35,847,760 to be received is an overestimate, because a large per cent of the lands are worthless for agricultural purposes.

The original public domain of the United States amounted to 1,815,000,000 acres, and cost the Government up to 1880, including over $40,000,000 for extinguishing Indian titles, $88,157,389, an average of less than 5 cents per acre.

The receipts from the sales and other disposal of the public domain, including grants to the new States for educational and other purposes, up to 1880, amounted to $200,702,849.

There are over 600,000,000 acres of public land unappropriated, including the lands the Indian title to which has been extinguished. Immense areas consisting of mountainous and arid lands are worthless for cultivation.

The following statement shows the cost of the different purchases from foreign nations, State cessions, and extinguishment of Indian titles:

Purchased from France in 1803	$15,000,000
Purchased from Spain in 1819	5,000,000
The Georgia cession of Alabama and Mississippi	5,961,819
Purchase from Mexico of New Mexico and California in 1848	15,000,000
The Texas cession in 1850	10,000,000
The Gadsden purchase in 1853	10,000,000
The Alaskan purchase in 1867	7,200,000
The extinguishment of Indian titles	40,000,000

American statesmanship thirty years ago, respecting needful rules and regulations for the disposal of the territory and other property of the United States was comprehensive enough to measure questions of internal policy in the light of the general welfare, and not on lines of a parsimonious economy. The great statesmen of that period, irrespective of party affiliations, and in the shadow of internecine war, did not pause to consider the cost of the public domain, or whether the lands of the Gadsden purchase cost the Government 30 cents more per acre than the 8,000,000 acres, or 400 townships, of public land in Iowa, then unappropriated, but offered a freehold to any actual settler upon any of the public agricultural lands wherever located free of cost. Why should we longer tolerate a departure from this wise and beneficent policy, a departure inaugurated in times of peace and unparalleled prosperity and upon the theory that the Indian reservation lands cost $1 more per acre than other public lands?

Mr. Chairman, the prices paid by the Government for these Indian lands are largely in excess of their actual value. Under the new reimbursement policy the settlers are required to pay from $200 to $600 for their homesteads. The Government practically takes a mortgage on their homesteads for the amount of the excessive purchase price, to run for a period of five years. A failure on the part of the mortgagor settler to make payment according to the terms of the mortgage contract works a forfeiture of his homestead and improvements, with no right of redemption; and besides, he is forever thereafter disqualified to exercise the privilege of homestead entry upon any public land.

It appears to me, Mr. Chairman, that this policy practically creates a kind of endowment fund, to be held in trust by the Government for the benefit of the Indians, and at the expense of the poor pioneer settlers.

If the policy of creating an endowment fund for educating and civilizing the Indians is practical statesmanship—and I am not prepared to say that it is not—why not appropriate the money directly from the Treasury and not resort to the inequitable and unwarranted discrimination against some of the Western States and Territories by an assessment upon the homes of their citizens. As a matter of fact, Mr. Chairman, the settlers on these Indian reservation lands have already paid into the United States Treasury more than the lands were fairly worth when they entered them. The settlers in South Dakota and Oklahoma have already paid in fees and purchase money, under the commutation clause of existing law, at least $5,000,000. And if they are allowed to obtain title under the general homestead law, with the proviso that they may commute at their option, several millions more will be paid into the Treasury.

Mr. Chairman, I desire to call the attention of the committee to another feature of this discriminating Indian policy. The principal purpose of the allotment law of 1887 was to promote the civilization of the Indians. By giving them their lands in severalty, it was thought that it would tend to induce them to adopt agricultural habits, and in the end render them self-supporting. It was also intended to open up the unallotted lands to white settlement, and by thus mingling the races, to advance the civilization of the Indians, so that in carrying out this intendment of the law, every settler upon these Indian reservations practically becomes an agent of the Government for carrying forward the scheme of elevating and advancing the Indians, by becoming an object lesson of civilization, and at a sacrifice of his social comforts.

To be compelled to mingle with savages is far from a desirable association. It is a hardship unknown to the homestead settlers in more

favored States. Besides, there are imposed upon these settlers extra burdens of taxation for the support of their local governments, for by the terms of existing law the lands alloted to the Indians—and they are, as a rule, the best lands—are exempt from taxation for a quarter of a century. These settlers also contribute their share of the indirect taxation of the Government to raise the revenue appropriated to pay the Indians for their lands and the interest on obligations assumed by the Government and unpaid.

The allotted lands of the Sisseton and Wahpeton reservation in South Dakota, amounting to over 300,000 acres, at an appraised valuation by the Government of upward of a million dollars, are exempt from taxation for municipal or State government. There are about two thousand Indians on this reservation to be governed, and their persons and property protected, the burden of which falls upon the white settlers, now numbering about four thousand.

These Indians abandoned the chase forty years ago. They have adopted agricultural habits, and are among the most advanced in civilization of any of the families of the Sioux Nation. Many of them are educated and quite wealthy. They exercise all the rights and privileges of citizenship. Yet under existing law they are practically exempt from the burdens of government.

There are 25,000 Indians in South Dakota in a semisavage condition. The State will sooner or later have to assume the grave responsibility of civilizing and governing this large and increasing Indian population.

It will require a hundred years to bring this aboriginal population to a state of civilization where they will be able to contribute their share of the moral and productive forces, essential to the safety and prosperity of the State or assume a just proportion of the burdens of government.

The same is true of every Western State and Territory containing an Indian population.

Upon every principle of equality of rights and privileges of States and persons, in their relation to the Federal Government, respecting the benefits of national legislation, the State of South Dakota and the Territory of Oklahoma and their people are entitled to all and equal benefits accorded to other States of the Union containing public lands in the matter of the disposition of such lands.

There is no reason why the settlers on the public lands of Iowa, Kansas, Nebraska, and other States should be allowed to obtain homesteads free of cost that does not apply with equal and even greater force to the settlers upon the Indian lands in South Dakota and Oklahoma in releasing them from their contracts with the Government to pay for their homesteads, and allowing them to obtain freeholds without cost.

In equity, if there is to be any discrimination in national legislation respecting the public lands, it should, under the circumstances, be in their favor and not against them.

Mr. Chairman, the case of legislation under consideration demands the dispassionate judgment of this committee of the American Senate. It involves a principle of legislation which has for more than thirty-five years received the unqualified sanction of the greatest American statesmen, living and dead, and has been accepted by the people of the nation as an American doctrine.

If the policy of the free homestead act is wise and just, the proposition of legislation contained in this bill and the amendment proposed is one of degree and not of principle.

The only argument that can be urged against it is that the public

lands acquired by cession from the Indians cost the Government more than other public lands, and that in order to meet the obligations incurred by contracts made with the Indians Congress will have to make large appropriations of the public moneys. I find from a careful estimate that it will not exceed $15,000,000 or $20,000,000, and would extend over a period of ten or twelve years. My estimate is based upon the reasonable probabilities of the amount that would be paid by the settlers, under the commutation clause of the bill, within the next ten years.

The proposition to release the settlers who have already acquired homestead entries from further payment under their contracts with the Government is certainly a reasonable one.

Only a small per cent of them will be able to meet their obligations in the next three or five years. A large majority of them are poor men. To pay their taxes, make needful improvements, and subsist their families is all they can possibly do. Besides, what with loss of crops from drought and the present low prices for all farm products, they are utterly bankrupt, at least a majority of them.

I received a letter from one of the most enterprising farmers on the Sisseton Reservation, in South Dakota, a few days since, in which he says:

> Unless the Government releases me from paying for my land I shall be obliged to abandon my farm and all my improvements.

Such is the condition of two-thirds of the four thousand homestead settlers upon the lands of that reservation, notwithstanding the fact that these Sisseton or Lake Traverse lands are the best adapted for general farming of any lands in the Northwest. Unless the relief which I have proposed is granted by this Congress there will be great suffering among these most deserving people.

It is said that these settlers understood the terms on which they were to acquire title to these lands, and are therefore morally as well as legally bound by them. This is doubtless true. Still there are some extenuating circumstances in their case. When these reservation lands were opened to public settlement there was great excitement over the matter. Thousands of immigrants were misled by the glowing accounts of the climate and fertility of the soil, and the superior advantages for farming over other Western lands. The exaggerations were set forth with all the skill of modern advertising. Handbills and pamphlets were scattered over the country like the leaves of autumn in the interest of transportation companies. The wild, mad rush to obtain the Oklahoma lands is one of the most notorious in the history of Western settlement. The same was true of the reservation lands in South Dakota, except in degree of excitement.

Many thousands of these misguided settlers, after suffering great hardships and disappointment, have returned to the places from whence they came. Large numbers remain for want of means to get away. The condition of these people appeals to the generosity of the nation and to Congress for legislation that will afford relief from the discrimination against them of existing laws. To release them from their present homestead contracts would go far toward effecting a just and practical relief.

The honorable chairman of the House Committee on Public Lands, Mr. Lacey, in his report upon the House bill for free homesteads on these Indian lands, says:

> The nation can well afford in times of peace to deal as liberally with its pioneer settlers as it did in the dark days when the original homestead law was enacted, in May, *1862*.

Mr. Chairman, it is said that the Government will suffer much loss in the event of the repeal of existing statutes providing for the sale of these Indian lands to homestead settlers. The honorable Secretary of the Interior, in a recent report to the House Committee on the Public Lands, estimates the loss to be $35,000,000.

I find upon examination of this report that the honorable Secretary has estimated the loss upon a valuation per acre, including the entire area of the different Indian grants. He proceeds on the theory that the Government will dispose of every acre at the prices now fixed for homestead entries, ranging from $1.25 to $3.75 per acre.

The facts are that large areas of these lands are within the arid belt, and unfit for farming or grazing purposes unless they are reclaimed by irrigation. Besides, large portions are only fit for grazing purposes. A large per cent of these grazing lands would be unprofitable for Western stock raising on tracts of 160 acres. Under existing laws they could only be sold to actual settlers in tracts limited to 160 acres. The Government, therefore, would not be able to dispose of large areas of these lands, which the honorable Secretary includes in his estimate, at any price. He makes no allowance for the lands already sold, amounting to over $3,000,000 in Oklahoma alone, nor for what will be received for commuted sales within the next five years.

I find upon examination of the public-land reports that the average commutations of homestead entries in the past has averaged about one-fifth of the whole number of such entries.

In conclusion, Mr. Chairman, permit me to suggest that the proper thing to do would be for the committee to substitute the Pettigrew bill for the Oklahoma bill, with, perhaps, a proviso excepting those Indian lands where, by the terms of the agreement, the United States has assumed a trusteeship for the sale of Indian lands, the proceeds of which are paid over to the Indians. This would place the settler in the relation of a purchaser from the Indians, and not from the Government.

The Pettigrew bill provides for free homestead entries of all lands obtained by treaty or purchase from the Indians. But if this honorable committee should conclude that it is best to amend the Oklahoma bill so as to include the Indian lands of South Dakota, and provide for other States by further legislation hereafter, it would be entirely satisfactory to the people I represent. But to enact the Oklahoma bill without the amendment I have suggested, would be, in my judgment, an act of injustice, or to say the least, an indefensible discrimination against the settlers upon the Indian lands in South Dakota.

The committee will please observe that the propositions I have presented contain no provisions for repayment of moneys already paid by the settlers who have commuted their homestead entries. I do not think it should be done. They have exercised an option of purchase rather than to comply with the five years' residence before acquiring title. There are other considerations which I would like to have discussed, but I forbear lest I worry your patience.

Allow me, Mr. Chairman and gentlemen of the committee, to thank you for the courtesy you have extended to me, and particularly for the patient hearing you have given to my very desultory argument.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 205.

IN THE SENATE OF THE UNITED STATES.

APRIL 9, 1896.—Referred to the Committee on Post-Offices and Post-Roads and ordered to be printed.

Mr. BUTLER presented the following

PAPERS, CONTAINING (1) AN ARTICLE BY JUDGE WALTER CLARK, ENTITLED "TELEGRAPH AND TELEPHONE," IN THE AMERICAN LAW REVIEW, ON THE LEGAL ASPECT OF THE TELEGRAPH AND TELEPHONE AS ESSENTIAL PARTS OF AN EFFICIENT POSTAL SERVICE; (2) AN ARTICLE BY PROF. FRANK PARSONS, ENTITLED "THE TELEGRAPH MONOPOLY," IN THE ARENA FOR JANUARY, FEBRUARY, MARCH, AND APRIL, REVIEWING, CONDENSING, AND EDITING THE VARIOUS REPORTS OF CONGRESSIONAL COMMITTEE ON BILLS PROVIDING FOR POSTAL TELEGRAPH; (3) AN ARTICLE BY JUDGE WALTER CLARK, ENTITLED "THE TELEGRAPH IN ENGLAND," IN THE ARENA FOR APRIL, 1895, CONDENSING AND EDITING THE CONSULAR REPORT FROM THE UNITED STATES CONSUL AT SOUTHAMPTON, ENGLAND, OF APRIL, 1895, ON THE POSTAL TELEGRAPH IN ENGLAND.

TELEGRAPH AND TELEPHONE.

THE LEGAL ASPECT OF THE TELEGRAPH AND TELEPHONE—ESSENTIAL PARTS OF AN EFFICIENT POSTAL SERVICE.

[From American Law Review.]

Many who admit the great advantages, nay, the necessity, of the telegraph and telephone being operated as a part of the postal system are deterred by the inquiry, Is it constitutional? In truth, it is unconstitutional for this essential branch of the postal system to be operated by a private monopoly or in any other manner than by the Government.

When the Constitution placed the post-office in the hands of the Government it conferred its exclusive operation, and with it all means of operating it to the best advantage, upon the Government. The same clause of the Constitution of the United States (Art. I, sec. 8) which empowers Congress to declare war, raise and support armies and a navy, to coin money, regulate commerce, and borrow money on the credit of the United States includes the provision to "establish post offices and post-roads."

If the power of the Government is exclusive as to the other provisions, it is so also as to the post-offices, for all these powers are conferred by the same clause and by the same words—in the same breath, as it were. The numerous decisions of the United States Supreme Court holding the power of Congress over the post-office and the carrying of

mails to be exclusive render unnecessary any discussion of an undisputed point. It is interesting to note, however, that in 1836 Hon. John C. Calhoun, the leader of the strictest constructionists, who denied to the General Government all powers not clearly granted, in a report made by him as chairman of a committee of the United States Senate, said: "It must be borne in mind that the power of Congress over the post-office and the mail is an exclusive power." These words have been cited and approved by the Supreme Court of the United States in the case of ex parte Jackson, so recently as the Ninety-sixth United States Reports, on page 734.

The bestowal of the exclusive right and duty to operate the post-office carried with it the exclusive right and duty to use all the agencies that would make the post-office most highly efficient, as such agencies from time to time should be improved or invented. On this principle the first telegraph line was built by a Congressional appropriation under a "strict construction" Administration (Polk's), and the telegraph belonged to the Government from 1844 to 1847, and when, under mistaken notions of economy, it was then turned over to private ownership, Henry Clay, the great Whig leader, and Cave Johnson, the Democratic Postmaster-General, were among the public men who went on record as earnestly protesting against such a step. Indeed, the Supreme Court of the United States, in an unanimous opinion, has held that the telegraph came within the grant of power to establish the post-office. That opinion, delivered by Chief Justice Waite, says:

> The powers thus granted are not confined to the instrumentalities of the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country and adapt themselves to the new developments of time and circumstances. They extend from the horse with its rider to the stage-coach; from the sailing vessel to the steamboat; from the coach and steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth.

And Justice H. B. Brown, who is recognized as one of the ablest members of the United States Supreme Court, in the leading article in the August Forum, says:

> If the Government may be safely intrusted with the transmission of our letters and papers, I see no reason why it may not also be intrusted with the transmission of our telegrams and parcels, as is almost universally the case in Europe.

Congress placed the same construction on its powers by chapter 230, acts 1866, which provides that all telegraph lines thereafter built shall be constructed under the notice, and only after the company signing a contract that the Government may at any time take over such telegraph lines upon paying the value of its material.

It will be noted, just here, that so far as railroads are used for the transmission of mail they were promptly, and from the beginning, adopted and used exclusively by the post-office. Whether, in so far as railroads are used for the entirely different purpose of carrying passengers and freight, they shall be taken over by the Government is an entirely different question, standing on its own basis, which has never affected the undeniable right and duty of the Government to use them exclusively, so far as they are used for the carriage of mails. But the telegraph and telephone (so far as used by the public for hire) are, and can be, only used for the transmission of mail, and unquestionably come within the exclusive grant to the Government of operating the post-office. The telegraph and telephone are simply the electric mail, or mail sent by electricity, just as the railway mail is sent by steam agency *in preference* to the horsepower formerly used in the days of stage-coaches and horseback riders and canal boats.

When the Government shall assume its duty of sending the mail by electricity railroad companies can still operate their own telegraph lines on their own business, and private telephone exchanges will still exist, just as railroads and others may now send their own letters by their own agents (Rev. Stat., sec. 3984), but not carry them for others for hire. (Rev. Stat., sec. 3982.) Then, as now, the Government would only have the exclusive privilege of carrying mail for hire. (Rev. Stat., sec. 3990.)

This privilege of carrying mail for hire, whether sent by electricity or steam or stagecoach, or on horseback, is an exclusive governmental function, and no corporation or monopoly can legally exercise any part of it. It is the duty of the Government to do it, and to do it in the quickest and most efficient manner, and at the lowest possible rate consistent with the cost.

The Army and Navy and the Department of Justice are Departments of exclusive governmental functions, in the same manner and to exactly the same extent as the post-office. But suppose that some branch of the Department of Justice (as by turning in the fines, penalties, and tax fees), or of the War or Navy, could be made a source of revenue, would it not be singular to turn over that revenue paying part of those Departments to a private monopoly, leaving the people to support the nonprofitable part? Yet that is exactly what is done with the Post-Office Department. Though the Post-Office is as exclusively a governmental function as the Army or Navy or the Department of Justice, the Government operates only the slow, antiquated, nonpaying part of the Post-Office, leaving the taxpayers to make up an annual deficit of six or eight millions; while the rapid, improved, up-to-date part of the Post-Office, the rapid or electric mail, is operated by a private monopoly and pays a heavy dividend on its watered stock of one hundred and fifty millions—ten times the actual value of its plant. Besides, this system is unjust, for the private monopoly naturally selects the best-paying districts, and a large part of the people are denied the advantages of a modern post-office.

In every country save ours alone the power of the monopoly has failed to maintain a system so unconstitutional and so opposed to the best interests of the public. Hence, in every country except ours the telegraph and telephone are constituent parts of the post-office, with the double result that the post-office facilities of the telegraph and telephone are extended to the country post-offices and the postal revenues show a profit instead of a loss. Notably Great Britain, which has most widely extended the use of the telegraph and telephone as a part of its post-office, shows a large annual profit from its post-office, instead of a deficit, which was usual before the telegraph and telephone were added to that department by Mr. Gladstone in 1870.

But there are those who say that the telegraph and telephone would centralize the Government. Yet it would be hard to see why an efficient postal service is more centralizing than an inefficient one, or why mail sent by electricity or pneumatic tubes (which should be adopted in the large cities) is more centralizing than mail sent by horseback or by steam. It is a puzzle to understand why ownership of telegraph or telephone wires costing less than $10 per mile should imperil the Government, more than the ownership of gunboats, or post-office buildings, or postal cars. If it were the question of adding new functions to the Government, as the ownership of railroads and the carrying of freight and passengers, this argument would be legitimate for debate. But when the Constitution has already turned over the exclusive duty of transmission of mail to the Government, there can be no argument of

this kind properly used against the introduction of the most improved methods for the transmission of the mail, whether by electricity or pneumatic tubes.

Telegraphic dispatches would be as sacred in the hands of Government employees as other mail is now, or as the telegrams are in the hands of the employees of a private corporation. Besides, Government employees, especially under civil service rules and subject to the supervision of public opinion, would be less capable of using the telegraph for partisan purposes, as has been done under corporation ownership, and as was flagrantly attempted to be done in the first Cleveland election, as everyone remembers.

With telephones at all country post-offices, and all villages and the smaller towns, few additional employees would be required, and those few would be added at centers which require the telegraph and where civil service rules obtain. The telephones and telegraph would be put in the post-office buildings already owned or rented by the Government, thus saving the rent of all the buildings now used by the private companies. This, and the saving of the salaries of the officials of the present corporations and the dividends on their largely watered stock, would enable the Government to reduce its tolls to the uniform rate of 10 cents per message independently of the large increase in business.

In Great Britain (by the official report made to this Government in the United States Consular Reports for April, 1895) the increase since the Government has taken over the telegraph and telephone has been tenfold in private messages, and thirtyfold in press messages; and the improvement in promptness of delivery has been from an average of two to three hours under private ownership to an average of nine minutes under Government. This wonderful increase in business has been due to the threefold cause of cheap rates, extension of the lines to all post-offices, and greater promptness in delivery. With wire costing less than $10 per mile there is no reason why the Government should not own a line to every post-office in the Union.

There should be no dicker with private companies about leasing or purchasing. In 1866 they only asked for five years to close up, but when the five years were out they had formed the present great trust and have ever since defied the public.

They have had thirty years' notice to abandon their use of a branch of the governmental functions. In that time they have received hundreds of millions of profits illegally extorted from the toiling masses. They have no claim to extract another dollar by lease or sale of their antiquated or worn-out instruments. Let the Government give the actual value of such wire and material as it may wish to use, and take complete and exclusive possession of the duties of a post-office. Certainly these corporations are entitled to no compensation for franchises or loss of expected profits, since under the act of 1866 every telegraph line has been built under a contract that it should be turned over to the Government upon payment of the assessed value of the material. The franchise has always been the property of the Government, and was only temporarily permitted to be used by the private corporations.

Every postmaster who can talk can use the telephone, and where a telegraph office is required the Government can employ an assistant as operator as easily as any other clerk. Other countries, without exception, are doing this good work of furnishing electric mail facilities at cheap rates to all its people, in the country as well as in the town. *Why* should this Government, alone of all the world, which claims, par *excellence*, to be a government of the people and for the people, fail in

this constitutional duty of furnishing proper postal facilities and to all its people? The only proper postal facilities for the American people are those which shall extend to every nook and corner of the Republic, which shall be the best that the latest advances in science can offer, and which are furnished as near the exact cost of the service as is possible and without profit. Such postal facilities the American people are entitled to demand as a right. They should rest contented with nothing short of this.

WALTER CLARK.

RALEIGH, N. C.

THE TELEGRAPH MONOPOLY.

[By Prof. Frank Parsons.]

Uncle Sam's letters go on foot, on horseback, in wagons, stages, steamboats, railway cars, and pneumatic tubes, but the telegraph wire he can not have, for that is sacred to Wall street. The "common people" may use foot power, horsepower, steam power, and wind power, but electricity, the best and swiftest of all, is reserved for the use of monopoly and those who can pay its extravagant rates.

It is perfectly natural that Wall street should wish to keep the telegraph in its own control, for it plays an important part in the processes by which Wall street gains possession every year of many millions of the wealth created by the "common people." It is equally natural for the people to wish that the transmission of their messages, and in fact all their business, should be performed in the best possible manner by the most effective means and with the most approved and advantageous methods. It is also natural that they should wish to reduce the power of monopoly and check the flow of their wealth into Wall street.

The people want good service and low rates; the companies want dividends. The people wish to own the telegraph so that it may be managed in their interest. The companies do not care to divide the control or the profits; they prefer to keep the power and the profits for themselves. They do not believe in partnership. It is very much easier to make millionaires with a telegraph owned by a few individuals than it would be with a telegraph owned by the people. The Post-Office does not make millionaires; the Signal Service is not a millionaire mill, nor the Army, nor the Navy, nor the Department of Agriculture, nor the Census, nor the public schools. When Uncle Sam administers a business he does it at cost, or if there is a profit he divides it among all the seventy million partners he works for—the stockholders in this big corporation we call our country. This big corporation created the telegraph franchise and gave it all the value it possesses. It has generously allowed the little corporation to use that franchise free of rent for many years to the incalculable profit of the latter. Now the big corporation wants to use the telegraph in its post-office, but the little corporation in Wall street says "No."

This conflict of interests has produced a long and earnest discussion of the question whether or no the people shall be permitted to use the electric current in the transaction of their postal business. Books, pamphlets, bills, speeches, arguments, investigations, and resolves have appeared in single file and in battalions until the literature of the subject makes of itself a very respectable library. And still this great case of The People *v.* Monopoly, which for fifty years and more has been on trial *in the halls* of Congress and on appeal to the supreme

court of public opinion remains upon the docket. During this half century of litigation the case has come to trial in nearly every nation on the globe, and in almost all of them judgment has been rendered for the people. Statistics from seventy five of the principal nations of the world show that the Government owns and operates the telegraph in all except Bolivia, Cuba, Cypress, Hawaii, Honduras, and the United States.[1]

How do you like the company, Uncle Sam? France, Germany, Russia, Sweden, Norway, Denmark, Switzerland, and many other nations built their own lines at the start. In Belgium and in the Netherlands some of the early lines were built by the Government and some by private enterprise. The Government lines were the most satisfactory and the public system was rapidly extended both by direct construction and by the purchase of private lines.[2] In England the telegraph was originally in private hands, but a three years' active campaign gave the people an easy victory.[3]

In America, more than fifty years of effort and appeal have failed to win the postal telegraph. Henry Clay, Charles Sumner, Hannibal Hamlin, General Grant, Senators Edmunds, Dawes, Chandler, and N. P. Hill, Gen. B. F. Butler, John Davis, Postmasters-General Johnson, Randall, Maynard, Howe, Creswell, and Wanamaker, Professor Morse, the inventor of the telegraph; Cyrus W. Field, the founder of the Atlantic cable and a director in the Western Union Company; James Gordon Bennett, Professor Ely, Lyman Abbott, B. O. Flower, Judge Clark, Henry D. Lloyd, Dr. Taylor, T. V. Powderly, Samuel Gompers, Marion Butler, and a host of other eminent men in every walk of life have championed the cause of the people.[4] Legislatures,

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[1] Vrooman's "Public Ownership," pages 214, 216. Also Tenth Census, volume 4, "Postal Telegraph," Postmaster-General Creswell's report, 1872, with statistical tables, and the Statistical Year Book of Canada, 1892, page 301.

[2] House Report No. 114, Forty-first Congress, second session, page 2; Tenth Census, volume 4, "Postal Telegraph."

[3] The first English telegraph line was built in 1846. In 1854 complaints began to be made of extortion, error, and inadequacy. These were repeated at intervals until the Edinburgh Chamber of Commerce brought the matter of public ownership definitely before Parliament in 1865, and in 1868 a bill was passed to enable the Postmaster-General to acquire and operate the telegraph lines, and the transfer was made February 1, 1870. (Bronson C. Keeler in Forum, vol. 9, p. 454; and House Report No. 114, Forty-first Congress, second session, pp. 6–8.)

[4] James Russell Lowell, Phillips Brooks, Francis A. Walker, and others of the highest character and attainments have expressed their sympathy with the movement, though too much engrossed with other cares to take an active part in it. In respect to the first two I speak from personal knowledge. President Walker, in a lecture entitled "Confessions of an Individualist," delivered at the Charlesgate, Boston, March 14, 1894, laid down the principle that the line between government functions and those which were not was the line between "services and offices which tend to become monopolies and those which do not." This clearly includes the telegraph among governmental functions. It not only tends to become a monoply, it is a monopoly now of the worst and most dangerous type. (Wanamaker's Argument, 1890, p. 5; Senate Report No. 805, p. 1; International Typographical Union hearings, 1894, p. 39; National Board of Trade's Report on Telegraph, 1882, p. 11.) President Walker further said, that another valid test would include in governmental activities any function in respect to which experience showed public administration to be beneficial to society and productive of an increase of individual activity. This rule also would make the telegraph a Government service, as the facts that appear in the text of this and subsequent articles abundantly prove. In conversation lately with the General, I referred to his lecture at the Charlesgate and he said in substance: "There are no hard and fast lines by which to determine what the Government shall do. When the people desire a reform we should have it. But it is not well to make a change before public sentiment is ready to stand behind it. If we do reaction may follow and we shall go back and forth, moving unsteadily as a drunken man reels on his way. The telegraph service is better in France, England, and Germany than it is

city councils, boards of trade, chambers of commerce, and labor organizations representing many millions of citizens have joined in the effort to secure a national telegraph. The New York Herald, Boston Globe, Philadelphia Times, Chicago Tribune, Albany Express, Washington Gazette, Omaha Bee, Denver Republican, San Francisco Post, and a multitude of other papers representing every phase of political opinion have earnestly advocated the measure. Two political parties have definitely demanded a Government telegraph; more than 2,000,000 men by vote and petition have asked for it.[5]

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here, and it will be well to put it under Government control whenever the people wish it." I remarked that millions of people and the greatest organizations in the country had persistently demanded a national telegraph, and that John Wanamaker declared the Western Union to be the only visible opponent, upon which the General said: "If that be true, the time has come for it." The opinion of President Walker is of great importance, because he is the acknowledged leader of the conservative school of political economy, the recognized chief of those most likely to object on philosophic grounds, aside from considerations of self-interest, to any extension of Government functions. If individualism and conservative political economy agree to the postal telegraph, what is there but fossilized prejudice and selfish disregard of the public good to oppose it?

[5] The Farmers' Alliance and Industrial Union, the National Grange, the Knights of Labor, the Railway Union, the American Federation of Labor, the International Typographical Union, the People's Party, and the Prohibitionists are a unit on the question of Government ownership of the telegraph. Two years ago the Populists claimed 2,000,000 ballots, and a vote of 1,650,000 was conceded to them by the more liberal of their opponents. The Prohibitionists polled about 250,000, so that at least 1,500,000 and probably 2,000,000 votes were cast in support of parties making the national telegraph one of their chief demands. The Farmers' Alliance in 1890 claimed a membership of over 4,000,000 men and women according to a book about the Alliance by H. R. Chamberlain, page 7. The paid-up membership is said to be a good deal less now, but it is still true that the Alliance, together with the National Grange, substantially represents the agricultural interests and sentiment of the country, and both organizations have most emphatically announced their wish for a Government telegraph (Journal of Proceedings of the National Grange, twenty-sixth session, 1892, p. 207; special report of the I. T. U. committee on governmental ownership and control of the telegraph, 1894, p. 42, et seq.; testimony of Marion Butler, president of National Farmers' Alliance, before the House Committee on the Post-Office and Post-Roads). The American Federation of Labor represents the trade unions of the country, and is composed of over 800,000 workingmen who demand Government ownership of the telegraph (President Gompers's testimony, Special Report, I. T. U., p. 7). At one time 530,000 Knights of Labor signed a petition for a Government telegraph. (Statement of Mr. Beaumont, March 7, 1890. Wanamaker's Argument, 1890, p. 2.) At another time Grand Master Workman T. V. Powderly is said to have declared that 800,000 signatures were obtained by the Knights upon a petition for Government ownership, and the petition was circulated only three weeks. In 1888 a resolution was submitted in the House which began thus: "Whereas petitions bearing the signatures of more than 2,000,000 citizens of the United States request Congress to pass a bill and provide for the establishment of a postal-telegraph system" (Wanamaker's Argument, p. 179). Away back in 1875 massive petitions had poured in upon Congress from 28 States and 3 Territories asking the Government to build a telegraph. Truly, as Mr. Wanamaker says, "the agricultural and industrial masses want the telegraph within their reach" (Wanamaker's Argument, p. 3).

No less strenuously do the commercial masses desire Government ownership of the telegraph. A strong stand upon this question has been taken by the New York Board of Trade and Transportation, the Manufacturers' Club of Philadelphia, the Chambers of Commerce of Denver, Pittsburg, Richmond, etc., the Commercial Club of Kansas City, the Board of Trade of Jersey City, the Norwich Board of Trade, the Winona Board of Trade, and numerous other powerful organizations of capital. The National Board of Trade declares in its reports that it "represents a majority of the commercial organizations of the country," and year after year it has made the question of a national telegraph one of the main objects of its solicitude (see report of executive committee, National Board of Trade, November 15, 1882, and statements before Committee on Post-Offices and Post-Roads, March 25, 1890, p. 16 et seq.). Here are the names of some of the great organizations which belong to the National Board of Trade: Baltimore Board of Trade, Baltimore Corn and Flour Exchange, Boston Merchants' *Association*, Bridgeport Board of Trade, Chicago Board of Trade,

And all the time the active opposition has come from a single source—the group of capitalists who claim the exclusive right to send the English language along an electric wire.[6] It is true that a small but powerful group of politicians and conservatives have lent their aid to the grateful monopoly by delaying legislation, hindering investigation, and pigeon-holing reports, but the monopoly itself is the only one that appears in active opposition to the postal telegraph. The line of battle is clearly drawn. On the one side the farmers, merchants,

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Cincinnati Chamber of Commerce, Detroit Board of Trade, Indianapolis Board of Trade, Milwaukee Chamber of Commerce, Milwaukee Merchants' Association, Minneapolis Board of Trade, New Haven Chamber of Commerce, New York Board of Trade and Transportation, New York Chamber of Commerce, Philadelphia Board of Trade, Portland (Oreg.) Board of Trade, Providence Board of Trade, San Francisco Chamber of Commerce, Scranton Board of Trade, St. Paul Chamber of Commerce, Trenton Board of Trade.

At least four State legislatures have joined in the petition to Congress for Government ownership of the telegraph, Massachusetts passing the resolution in 1893 without a dissenting voice. The Philadelphia common and select councils have also unanimously passed a similar resolve. Even the press, though largely under the thumb of the telegraph monopoly, have to a surprising extent indorsed the demands of the business men, mechanics, and farmers. Wanamaker says: "Of 289 newspaper articles which have come under my notice during this discussion (1890) 209 are for postal telegraphy and 80 against it. The objections are mostly smartly turned sentences about the utter business inexperience of persons engaged in trade." (Wanamaker's Argument, pp. 3, 22, et seq.) In Appendix K (p. 182 et seq.) of the Wanamaker pamphlet is gathered a large number of articles published in 1883, just after the telegraph strike. Most of them strongly favor a public telegraph, and nine-tenths of the favorable clippings support the plan of Government ownership. We shall see later why it is that the press is not so entirely unanimous in its advocacy of a national telegraph as the business men are and the agricultural and industrial masses, whose organizations speak for 24,000,000 workers, representing nearly the whole 70,000,000 of our population.

[6] Wanamaker said in 1890, "The Western Union is now the only visible opponent;" and the Select Committee of the House on the Postal Telegraph in 1870 said that objections to Government interference with the telegraph had "come altogether from one quarter, namely, the Western Union Company" (House Report No. 114, p. 13). Western Union methods of debate will be dealt with in detail hereafter, but it may be well now to clear the way of a few of their favorite fallacies.

"A public telegraph will paternalize the Government," say the defenders of monopoly. If so, it is pretty badly paternalized now, with the Post-Office, the Fish Commission, the Treasury, Customs, Navy, Army, Agricultural, Judiciary, Signal Service, and all the other Departments; but the people do not seem to desire to give up such paternalization—they appear to enjoy it. In truth, however, public service is not paternalism but fraternalism. A father is not elected by his children to control them and his rule does not rest upon their assent. If you and I choose Mr. B. to manage certain affairs for us, the said B. does not become our paternal relative, but our agent.

"It will cost too much." It need not cost the people one dollar of taxes to establish the postal telegraph. Plenty of capitalists are ready to build the lines for the Government, introduce low rates, and agree to turn the plant over to the nation for actual value at the end of fifteen or twenty years, or allow the service to pay for the plant gradually (as in the case of the Springfield Electric Works; see Arena for December, 1895), a method that would give the people a clear title in a few years, even at rates far lower than those in force now (see testimony of the representatives of New York syndicates that were ready and willing to build a postal-telegraph system under the provisions of Wanamaker's bill. The Bingham committee hearings, March 4 and 14, 1890). Better still to build or buy, and issue Treasury notes in payment; that would correct in part the evils of the vast contraction of the currency that has so long oppressed the people, and secure the telegraph without a burden; or bonds could be issued and the service let to pay the debt in fifteen or twenty years, on the plan by which Wheeling secured her gas works. In either way no taxes are needed. As for the cost of operation, the Select Committee on the Telegraph in 1870 calculated that the Government could do the business performed by the Western Union at a cost of at least $1,500,000 a year lower than the Western Union could do it. The absolute saving would be at least that much by reason of *combination* with the Post-Office and consequent saving in rent, fuel, light, and the *distribution* of labor (House Report No. 114, p. 44). As the telegraph plant and

mechanics, and working classes—the whole body of the people—with the philosophers, statesmen, philanthropists, and reformers; on the other the Western Union, the politicians, and a few individuals who have not recovered from the soporific doses of the ancient political economy of bestillity and letaloneativeness injected into their thought in their college days, and who are not yet sufficiently awake to know that the days of laissez-faire are done. On the one side commerce, agriculture, manufactures, labor, philosophy, and progress; on the

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business is more than twice as large now as in 1870, the saving in the same proportion would not be less than $3,000,000 a year. This is on the supposition of continuing to do business by the methods now in use; but if improved methods, well known in the electrical world, were adopted in the postal telegraph the saving would be far greater—so great, indeed, that there seems every reason to believe a uniform rate of 5 cents a message of 20 words would yield a substantial profit. Proof of this upon the highest and most disinterested electric and telegraphic authority will be given when we come to the subject in the text.

"The postal telegraph may be all right in Europe, but not in America. We don't want to imitate the monarchical systems and institutions of the Old World." I wonder if the gentlemen who made this "argument" and those who repeat it refrain from using the multiplication table and the ten commandments because they are in vogue in Norway and Sweden, Denmark, Belgium, etc. Do they abstain from wearing clothes because the wearing of clothes is an institution that exists in Russia? Do they go on their four legs for fear of imitating the kings and emperors by walking on two? We must not wear overcoats or neckties or trousers; the Germans do that. It was very dangerous, was it not, for us to adopt the idea of that monarchical Englishman, Stephenson, or the idea of that imperial Dutchman, Gutenberg, and it will be equally dangerous for us to adopt the idea of the despotic Gladstone that the telegraph is a good thing in a post-office, will it not? It does seem as though fast mails would be as valuable and sensible in a republic as in a monarchy. France thinks so, and Switzerland, the most democratic country in the world. New Zealand also, and the States of Australia (these are all republics, and each has a national telegraph system; we may imitate them if you insist on regarding the question as a matter of imitation) or we may take England as an example, for she is in every substantial sense as real a republic as the United States. In truth, such objections seem foolish and weak, and must arise from very careless thinking, reckless appeal to prejudice, or a desperate lack of good argument. I would not trouble the reader with a refutation were it not that men in high position have been known to repeat such absurdities and give them the impetus of their names, whereby insidious appeals are made to the thoughtless prejudice of unenlightened patriotism. True patriotism, wide awake, demands for America all that is good, whether it originates in Europe or the Fiji Islands. In the case of the telegraph, however, we have only to follow the lead of our own Government, which was the first to adopt the electric telegraph and establish it in connection with the post-office, where it would have remained to this day had it not been for the power of private capital and the weakness of some of our legislators and the failure of others to foresee the enormous value of the telegraph.

"It will put the Government into the field of private enterprise." Well, that is what the people have been doing since the dawn of civilization. Defense was once dependent entirely on private enterprise; so were education, justice, prevention and punishment of crime, guarding against disease, care of the sick, extinguishment of fire, manufacture of the weather, transmission of intelligence, etc. The people have put the Government into the field formerly occupied by private enterprise because they have become aware that the Government could do the work better than private enterprise. In the present case of the telegraph, however, the quoted words at the head of this paragraph are not strictly true. It would have been more accurate to say of the postal telegraph, "It will put the Government into the field of despotic monopoly."

"It is not the Government's business." "It is out of the Government's sphere." Senator Edmunds does not think so (see Senate Report No. 577, part 2); nor Walter Q. Gresham (Postmaster-General's Report, 1883); nor Judge Clark, nor sixteen or more committees of Congress, nor Congress itself, nor the Supreme Court of the United States. (See for authorities the last topic of this article, "Duty of the Government to establish a postal telegraph.") Henry Clay did not think the telegraph was out of the Government's sphere; nor did Charles Sumner, of Massachusetts; nor Thomas Jefferson, Alexander Hamilton, James Madison, Benjamin Franklin, and the other founders of the Constitution, who expressly made the transmission of intelligence a part of the business of the Government. Surely these men knew more about the legitimate sphere of Government than the Western Union and its allies. Pro-

other side Wall street, self-interest, and sophistry. On the one side the people and common sense; on the other unscrupulous power and its allies—the people against monopoly.

Able counsel for the people have not failed to push their cause. Senator Edmunds in 1883 introduced a bill to establish a postal telegraph, another in 1885, and another in 1887. Senator Dawes from 1873 to 1888 introduced four bills to provide for the transmission of correspondence by telegraph. Others have been equally persistent. Altogether more

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fessor Ely does not think the telegraph is beyond the sphere of Government; nor President Walker, the head of the school of conservative political economy; nor Gladstone, who represents high-water mark in the statesmanship of England, and to whose efforts that country largely owes its postal telegraph; nor Bismarck, nor Carnot, nor the patriot statesmen of Switzerland. The truth is that anything the Government can do to benefit the people is within its sphere. The public good is the supreme law. It is just as much within the sphere of the Government to send a message along a wire as to send it along a railroad or pneumatic tube. The Government is simply an instrument to render service for the people. A cobbler might have opposed the use of the sewing machine for stitching leather on the ground that such work was out of the sphere of the sewing machine with just as much reason as the Western Union in opposing the postal telegraph on the ground that such work is out of the sphere of the Government.

"The Government could not be sued." It will be an easy matter to provide that damages for error or delay should be recovered by suit against the "telegraph department."

"But the increase of patronage will be dangerous." There need not be any increase of patronage. The Government may contract for telegraphic service as it does for railway service, or it may own the lines and contract for the service; or, better far, it may own and operate the lines under strong civil service rules, as is the case in England, France, Germany, Switzerland, Australia, and other countries. (See Eleventh Report United States Civil Service Commission, 1895.) With a solid civil service law and a nonpartisan board (i. e., a board composed of a member from each party) to administer it, an increase of public employees no longer means an increase of patronage, for their is no patronage where appointment depends upon merit proved in competitive examination; promotion follows on valuable service, and removal is only for serious cause judicially ascertained, with a right of appeal to the regular courts. Such provisions would form a part of a wise postal-telegraph law. But even without them the danger from increase of patronage would be slight. Uncle Sam has 240,000 employees. In combination with the post-office, the telegraph would not require an addition of more than 20,000, a large part of them women and boys who are not yet able to vote. With a population of 70,000,000 and a voting class of 18,000,000, a group of 260,000 Government employees does not look alarmingly dangerous, especially when we consider that 48,000 are already under civil service rules, 40,000 more in Army and Navy, and another large body composed of quite inoffensive women. Some years ago the Government had 2,500,000 employees, and they were armed to the teeth; and many croakers predicted that they would do dreadful things, but they didn't; they saved the Republic.

"The secrecy of messages will be violated." There is no complaint of such sort against the postal telegraph in England or on the Continent, but there have been loud complaints against the Western Union on this head, both in respect to United States Government messages, even in time of war, and in respect to individual business, and the facts have been proved in court and damages awarded (House Report No. 114, pp. 10–12, 68, and Congressional Record, second session Forty-third Congress, p. 1422).

"Only 1 in 60 uses the telegraph. No probable reduction of rates or increase of facilities would be apt to raise the proportion much, and it would not be fair to put on the taxpayers the burden of a service used only by a few." As already remarked, there will not be any burden about it. The business can easily pay for itself, and more, as it does in many countries across the sea. It will be more apt to lower the rates of taxation than to raise them. But there is another and deeper falsity in the above objection. The statement that "no probable reduction of rates or increase of facilities would be apt to raise the proportion" of people using the telegraph is a statement that could only be made by one quite unacquainted with the history of the telegraph and the post-office, both in Europe and America, and with the history of this discussion, or by one entirely free from any inconvenient regard for the truth. The facts set forth in numerous public documents in this country and in Europe, and reported to Congress by its committees again and again, conclusively prove that *reduction of* rates and increase of facilities produce the most astonishing increase in *the use of* the service. "The reduction of rates one-half in Belgium and Switzerland

than seventy bills have been introduced into Congress for the purpose of establishing a postal telegraph. Eighteen times committees of the House and Senate have reported on the question, sixteen times in favor of the measure, twice against, a clear majority of three-fourths in favor of the people.[7] Some of the ablest men in Congress have conducted these investigations and made the reports.

Of the two adverse reports, one was a two-page document mildly expressing the opinion that the telegraph monopoly should be regu-

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doubled the correspondence in one year"(Senate Report No. 242, Forty-third Congress, first session, p. 4); and the extension of facilities was slight, only one-fifteenth to one twentieth, merely the nominal growth (see statistics, House Report No. 114, pp. 2, 56).

R. B. Lines, who made the census of the postal telegraph for the United States Government, testified as follows before the House Committee on Appropriations: "In Switzerland and Belgium a reduction of one-half in the rates produced a double business in one year, with very slight increase of facilities. In Great Britain the adoption of a uniform and slightly reduced rate nearly swamped the lines with messages, and in Canada a reduction which applied to less than 10 per cent of the business augmented it 25 per cent in the first year." (House Mis. Doc. No. 73, Forty-second Congress, third session). "In Prussia in 1867, a reduction of 33 per cent in the rate was followed by an increase, in the very first month after the change, of 70 per cent in messages. In France, in 1862, a reduction of 35 per cent in the rate was followed by an increase of 64 per cent in messages. The Swiss inland rate was reduced 50 per cent on January 1, 1868, and in the first three months there was an increase of 90 per cent in the inland messages over the corresponding months in the previous year." (House Report No. 114, p. 3.)

The Belgian director of telegraphs writes in respect to the several reductions in his country: "These reductions have caused four times the number of dispatches that would have been sent at the old rates. It has thus been a great boon to the people." (House Report No. 114, p. 24.) In Switzerland, "the reduction by one-half, of the internal tariff had the effect of doubling the number of dispatches of that class, and that immediately, almost without transition." (Swiss report for 1868, quoted in House Report No. 114, p. 28.) In England a reduction of 33 per cent on three-tenths of the messages and 50 per cent on the remainder caused an increase of 100 per cent in the business in about two years. There was in this case a considerable extension of lines. One president of the Western Union forgot to sustain this plea of no-great-prospect-of-increase-of-business-by-reason-of-reduction-of-rates-and-increase-of-facilities, and he testified before the Select Committee on the Postal Telegraph that if the bill it was considering should be adopted rates would be decreased 60 per cent and "the messages offered for transmission would be from ten to fifty times more than the wires would carry." (House Report No. 114, pp. 32, 125, 134.)

And the Western Union does not do and never has done one-half the business its lines would carry, so that the total increase, according to Mr. Orton, would be from twenty to one hundredfold the present business. The development of business consequent upon low rates and the extension of lines results from the use of the telegraph by a larger number of people. The wealthy people of the cities use it now all they wish to; they would use it little if any more with a 5-cent rate than with a rate of 25 cents. But to the poor and to people in moderate circumstances, the difference between the telegraph and postal rates is practically prohibitive except under the stress of very special need. President Green, of the Western Union, said that 46 per cent of their business is speculative, 34 per cent legitimate trade (his own words), 12 per cent press, and 8 per cent social (Bingham hearings, 1890, p. 56). In Senate Report No. 577, Part II, p. 15, the then president of the Western Union said the company's social business was 5 or 6 per cent of the whole. In Belgium the social messages constitute 55 to 63 per cent of the whole. Formerly, when the rates were higher, the social business was only 13 per cent in that country. (I. T. U. hearings, 1894, p. 17; Senate Report No. 577, p. 16.) In England the social business is said to be four times as large as in this country—eight times as large in proportion to the population. (Testimony G. G. Hubbard, I. T. U. hearings, 1894, p. 24.) In Switzerland the social dispatches are 61 per cent of the whole. (Senate Report No. 577, p. 16.) Comment is unnecessary. The facts speak for themselves.

[7] The adverse reports are: House Report No. 32, Fortieth Congress, third session, (1869); Senate Report No. 434, Fiftieth Congress, first session, 2 pages. The favorable reports are: House Report No. 187, Twenty-eighth Congress, second session, March 3, 1845, Committee on Ways and Means; House Report No. 114, Forty-first Congress, second session, *July 5, 1870*, Washburn, Select Committee on Postal Telegraph;

lated, but that public ownership was not best because of the increase of patronage, and because the committee thought it would cost more to run the telegraph under the Government than under private enterprise. No evidence was taken, no investigation was made; the committee simply stated their feeling about the matter. The report was made by John H. Reagan, of Texas.

The other adverse report was made in 1869 upon the ground that the five years of security given to the companies by the law of 1866 had not yet elapsed. The telegraph act[8] of July 24, 1866, gave any company organized under the laws of any State a right to construct and operate lines "through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States, and over, under, or across the navigable streams and waters of the United States," on condition: (1) That Government business shall have priority of transmission over all other business and shall be sent at rates to be annually fixed by the Postmaster-General; (2) "that the rights and privileges hereby granted shall not be transferred by any company acting under this act to any other corporation, association, or person: provided, however, that the United States may at any time after the expiration of five years from the date of the passage of this act, for postal, military, or other purposes, purchase all the telegraph lines, property, and effects of any or all of said companies at an appraised

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House Report No. 115, Forty-first Congress, second session, Palmer; House Report No. 6, Forty-second Congress, third session (1872); House Report No. 125, Forty-third Congress, second session (1875), General Butler, Judiciary Committee; House Report No. 137, Forty-sixth Congress, third session (1881), Committee on the Post-Offices and Post-Roads; House Report No. 2004, Forty-seventh Congress, second session (1883), Bingham; House Report No. 1436, Forty-eighth Congress, first session (1884), Committee on the Post-Offices and Post-Roads; House Report No. 955, Fiftieth Congress, first session (1888), Rayner, Committee on Commerce; Senate Report No. 18, Forty-first Congress, second session (1870), Ramsey, Committee on Post-Offices and Post-Roads; Senate Report No. 20, Forty-second session (1872), id.; Senate Report No. 223, Forty-second Congress, second session (1872), Zachary Chandler, Committee on Commerce; Senate Report No. 242, Forty-second Congress, third session (1872), Committee on Post-Offices and Post-Roads; Senate Report No. 242, Forty-third Congress, first session (1874), id.; Senate Report No. 624, Forty-third Congress, second session (1875); Senate Report No. 577, Forty-eighth Congress, first session (1884), N. P. Hill, Committee on Post-Offices and Post-Roads; Senate Report No. 577, Forty-eighth Congress, first session, part 2. For hearings, memorials, etc., see House Mis. Doc. No. 36, Forty-first Congress, third session, Washburn; House Mis. Doc. No. 39, Forty-first Congress, third session, Hubbard; House Journal, page 173, Forty-first Congress, third session, Washburn; Senate Ex. Doc. No. 14, Forty-second Congress, second session, Belknap, Secretary of War; House Report No. 69, Forty-second Congress, second session, Committee on Appropriations; House Mis. Doc. No. 73, Forty-second Congress, third session, id.; Senate Mis. Doc. No. 79, Forty-second Congress, third session, Hubbard; Senate Report No. 805, Forty-fifth Congress, third session, Committee on Railroads; Senate Mis. Doc. No. 86, Forty-second Congress, second session, memorial of Western Union; Senate Mis. Doc. No. 39, Fiftieth Congress, first session, id.; The Investigations on Labor and Capital by the Blair Committee of the Senate on Education and Labor, Forty-eighth Congress (1883); Census Report on Foreign Postal Telegraph, by R. B. Lines, 1883; the Bingham hearings, "Statements in regard to postal telegraph facilities," being the hearings of the House Committee on the Post-Offices and Post-Roads in reference to the Wanamaker bill, 1890; I. T. U. hearings before the Committee on Post-Offices and Post-Roads, May 4 to June 26, 1894. In House Report No. 69 the committee had no question before them but the interpretation of the telegraph act of 1866 in respect to the powers of the Postmaster-General, etc. In Senate Report No. 805 the Committee on Railroads was instructed to inquire if it was expedient to authorize the railroads to do telegraph business. The committee reported that, "In order to intelligently conclude as to the proper remedy for the evils sought to be cured, to wit, the great existing monopoly of the business of transmitting telegraph dispatches," the committee's powers of inquiry should be extended so as to "embrace the expediency of a postal telegraph system."

[8] United States Statutes at Large for 1866, page 221.

value, to be ascertained by five competent, disinterested persons, two of whom shall be selected by the Postmaster-General of the United States, two by the company interested, and one by the four so previously selected; (3) that before any telegraph company shall exercise any of the powers or privileges conferred by this act, such company shall file their written acceptance with the Postmaster-General of the restrictions and obligations required by this act."

The Western Union and other companies accepted the provisions of this act and extended their lines on the faith of it, wherefore the committee were perfectly right in saying that as the period fixed by the statute had not expired, Congress ought not to pass "any law hostile to the spirit of the contract into which the companies had entered by its invitation," and in refusing to favor bills to establish Government lines which would subtract from the companies' business during the said five years.[9]

The only adverse matter of any volume or even apparent weight consists of the testimony of successive presidents of the Western Union and the arguments of the company's counsel. Such testimony and argument has occupied much time in several Congressional hearings, and has also appeared in pamphlet, magazine, and newspaper form.

Of the favorable reports the most important are House Reports Nos. 114 and 187, and the Senate Reports Nos. 18 and 577. Valuable data and powerful arguments are also to be found in the proceedings of committees that did not make a formal report. The argument of Postmaster-General John Wanamaker, and the testimony taken by the Bingham committee in 1890, are worthy the most careful attention.[10] The investigations of the Blair committee in 1883,[11] and the I. T. U. hearings before the House Committee on the Post-Office and Post-Roads in 1894, are also specially valuable. The reports of our Postmaster-Generals,[12] the public

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[9] House Report No. 32, Fortieth Congress, third session, page 7 (1869).

[10] The hearing was before the House Committee on the Post-Office and Post-Roads, Fifty-first Congress. Only a few copies of the proceedings were published. Mr. Wanamaker's argument and part of the evidence were printed under the title, "An argument in support of the limited post and telegraph, by the Postmaster-General," Government print, 1890. This can be easily obtained and is one of the most valuable documents in the literature of the subject.

[11] The hearings occupied about a year's time of the Senate Committee on Education and Labor. The testimony taken by the committee is published in four volumes under the title "Labor and Capital." A fifth volume was announced but never published, because the committee for some reason did not make a report.

[12] The most noteworthy are those of Cave Johnson, 1844–45; Creswell, 1871, 1872, 1873; Maynard, 1880; Howe, 1882; Gresham, 1883, and Wanamaker, 1890–1892; the last two and Creswell's report of 1872 are the most important. All but Mr. Gresham advocate the postal telegraph. Mr. Gresham quotes the following words from the report of the Committee on Ways and Means (House Report No. 187) and calls them "just remarks:" "The same principle which justified and demanded the transference of the mail on many chief routes from the horse-drawn coach on common highways to the steam-impelled vehicles on land and water is equally potent to warrant the calling of the electro-magnetic telegraph in aid of the post-office in discharge of its functions of rapidly transmitting correspondence and intelligence." Later in the report he states that he does "not feel at liberty to recommend a Government telegraph because of the danger to purity of administration arising from an increase of service under the spoils system." The only way to reconcile these two ideas, expressed within the same report within a few paragraphs of each other, is to conclude that Postmaster-General Gresham would favor a postal telegraph under thoroughgoing civil-service rules impartially and firmly administered, for that would carry out the principle he advocates, and at the same time avoid the danger he fears; and that is precisely the kind of postal telegraph we advocate, so that Walter Q. Gresham seems to be substantially in harmony with the movement.

Postmaster-General Bissell devotes three pages to the subject in his report for 1894. He opposes a postal telegraph. He thinks it would cause a deficit and be productive of "wrangling and *jealousy*" through the "limitless difficulty of determining the char-

documents of England, France, Germany, Belgium, Switzerland, Sweden, Norway, Italy, Russia, New Zealand, and Australia, the volumes of the Arena, Forum, North American Review, and other magazines, the works of electrical engineers, the Western Union reports, the proceedings of labor unions and of commercial organizations, the platforms of political parties, the speeches of prominent men, and the files of our

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acter, quality, and amount of service that should be accorded to the various sections of the country." It is hard to see why the introduction of electric mails should cause any more wrangling and jealousy between different sections of the country or any more trouble in distributing the service than the introduction of steam mails or the adoption of the free-delivery system. Give fair facilities to all and better facilities where the amount of business warrants it; the test of population and business done determines the distribution of service now without the slightest difficulty and would do so just the same if the functions of the post-office were multiplied a hundredfold. As to the deficit, Mr. Bissell bases his belief on the assertion that the English postal telegraph does not pay its operating expenses. This is not true, but if it were, the conclusion of Mr. Bissell would not follow. If it is good logic to say, "England has a deficit on its postal telegraph, therefore the United States would have a deficit on its postal telegraph," then it is good logic to say, "France, Switzerland, Sweden, Belgium, and other countries realize a profit on their postal telegraph, therefore the United States would make a profit on the postal telegraph." As already remarked, the statement of the Postmaster-General in respect to England is not true, though he doubtless thought it was. He says, on page 48 of the report for 1894, that the interest on the English telegraph investment for the year 1893 was $1,455,584. "In the operation of the service there was a further loss of $811,741."

The report of the English post-office for 1893 showed that there had been a large extension of lines to life-saving stations and other points, 673 new offices in all. I suspected that the cost of new construction had been included in the "expenditures" assumed by Mr. Bissell to be operating expenses, so I wrote to the English postmaster-general, and here are the figures he sends me for 1893:

Total receipts	£2,526,312
New purchase and construction	185,609
Operating expenses	2,507,385
Total expenditure	2,692,994
Net profit on operation	18,927
Interest	298,888

So there was a net profit on operation of $94,635. I suppose someone who looks at the lump sums of the English postmaster-general's report for 1893–94, and does not think of inquiring about the items, will be telling someone that there was a deficit in operation of almost a million, whereas the itemized account shows that taking out the cost of new construction there was a net profit of $138,850. In 1890 the net profit was $1,451,320; in 1887 it was $442,420; in 1881 it was $2,257,315; in 1875 it was $435,375; in 1873 it was $568,995. Such are some of the figures taken at random. The profit varies, but every year, from 1894 back to the first report in 1871, shows a considerable net profit in the operation of the telegraph. In the last three years and the five years from 1884 to 1888 the surplus was not sufficient to defray the cost of new construction or extensions; but in each of the other sixteen years the net profit was a good deal more than sufficient for this purpose, the excess, after paying for all extensions, rising in some years as high as $1,500,000. From February, 1870, down to the present time the actual cash received for postal-telegraph service in England has paid all operating expenses and all cost of extensions, new purchase, and construction, and turned into the treasury a net profit of $6,683,610, besides rendering free service to other departments of the Government which at regular rates would have amounted to $1,860,450. As we shall see hereafter, the English post-office has sent the telegraph into thousands of rural districts where the private companies did not and would not go, has established rates that are several flights of stairs below ours, and adopted the policy of raising the salaries of employees every year in a ratio of 2 to 3 per cent. In spite of all this the operating account shows the gratifying results above mentioned—a financial as well as a social success. Yet the erroneous statement of Mr. Bissell will doubtless be quoted by persons opposing the postal telegraph without stopping to investigate its truth.

As to capitalization and interest, we do not need to follow in the footsteps of the English post-office. We should not pay several times the value of existing lines if we buy nor go into debt if we build. The whole matter can be managed without a dollar of taxation, as will appear hereafter, and our system can render good service at very low rates and still make a profit. Even if the English department had not

leading newspapers, have all a place in the study of this question of the telegraph.[13]

With this brief review of the history of the case and the sources of evidence, let us turn our attention to the plaintiff's brief.

The plaintiffs respectfully present for the consideration of the court the following points in support of their claim that the telegraph should be used in connection with the postoffice in order that their correspondence may be carried on with the swiftness and economy that characterize the transmission of intelligence in other parts of the civilized world.

(1) *It is the positive duty of the Government to use the telegraph as a factor in the postal service.*—This duty is imposed by the Constitution. The Constitution intrusted to Congress the power "to establish post-offices and post-roads." This power is interpreted by the Supreme Court to mean the transmission of intelligence in any form and by any means (96 U. S., 1). The Federal Government is therefore the agent of the people for the transmission of intelligence. It is a well-settled principle of law and justice that an agent is bound to be loyal to the interests of his principal, bound to execute his trust in at least as enlightened and energetic a manner as he does his own business of a similar nature, bound to use modern methods and improvements of established value in the transaction of business of the sort that has been intrusted to him. An agent to build a house would not discharge his duty by building a log cabin in the style of olden times. He must avail himself of the architectural science of the day and build a good modern house, just as if he were building for himself, or better. An agent who uses one method in his own affairs and an inferior method in similar affairs of his principal is clearly neglecting his duty, to put it as mildly as possible. Yet this is just what our Congressmen are doing when they use the telegraph to forward their own correspondence but refuse to use it to forward the correspondence of the people.

Clearly the Federal Government is the agent of the people for the transmission of intelligence; clearly it ought to adopt new and better methods of transportation as advancing civilization reveals them;

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made a profit in 1893 it would not follow that it must keep on at a loss, for its history shows that the surplus is small one year and large the next, moving up and down in an irregular line. Even if the English department made a loss every year it would not follow that we should do the same, for we need not carry the press dispatches at rates not only far below ours but considerably below cost as England does. And, finally, even if a good postal-telegraph system in the United States should be operated at a loss (which need not be) still it would be no argument against its adoption until it were shown that its vast benefits were not worth the expense. And Postmaster-General Bissell should be the last one to raise such an objection, for on the first page of this very same report of his I find these words about the Post-Office Department: "It can not and should not stop to consider little economies. It must needs exert itself to the utmost to secure the best possible results in the way of celerity, accuracy, and security in the dispatch of the mails and without sparing any reasonable expenditures in that behalf."

[13] The article of Dr. Norvin Green (president of the Western Union) in the North American Review (vol. 137, p. 422, 1883), adverse, and the favorable articles by Cyrus W. Field in the North American Review for March, 1886, by Bronson C. Keeler in the Forum (vol. 9, page 450, 1890), by Judge Clark, of the supreme court of North Carolina. in the Arena, March, 1892, and August, 1895, and the present symposium by Professor Ely, Lyman Abbott, and others in December, 1895, and following issues are of special interest. A number of newspaper articles relating to the postal telegraph will be found in the Wanamaker pamphlet (p. 22 et seq., and p. 182 et seq.). A list of bills and resolutions is given, pages 173–180, and a list of speeches in Congress on pages 180–181. The Congressional Record, the newspapers, the various reviews, and the catalogues of the great libraries will supply the reader with abundance of other materials if he desires to devote his life to the subject.

clearly the superiority of the telegraph has long since been revealed; therefore clearly it has been and is the duty of the Federal Government to utilize the telegraph and telephone in the carriage of the people's correspondence. To hold the contrary, to say that Congress is not bound to adopt new methods as they are discovered and proved to be superior, is to say it would have done its duty by continuing to carry all the mails by foot and horse, refusing the aid of steam. Any rule that would relieve Congress of the duty of using electricity in the service of the nation would equally relieve it of the duty of using steam or even horsepower in their service, and any principle that establishes the duty of the Government to use the power of steam in the people's business establishes, with still greater emphasis, its duty to use the telegraph.

Postmaster-General John Wanamaker adopts this view—that it is the duty of Congress to establish a postal telegraph.[14] Indeed, it has been from the first the almost unbroken doctrine of the Post-Office Department that it was in duty bound to keep up with the times and not permit itself to be outstripped in the rapidity of communicating intelligence. (See House Report No. 187, quoted below.)

Senator C. A. Sumner, of California, said, before the House Committee on Post-Offices and Post-Roads, on March 25, 1884:

> I lay it down as a proposition that I want to have duly considered by this committee and the country that the Constitution of the United States, as interpreted by a century of unchallenged legislation, does imperatively require that the Congress of the United States shall establish a postal system. I lay it down as a fundamental proposition that the postal telegraph is a part of the postal system of the Government, the postal system of the United States having been established for the purpose of transmitting intelligence between the inhabitants of the land.

Gardiner G. Hubbard says that Congress had no more right to delegate the power of transmitting intelligence than the power to coin money or declare war. Senator Edmunds said in his testimony before the Senate Committee on Post-Offices and Post-Roads that government was constituted to promote the general welfare, to disseminate intelligence, to defend the country, etc., and that the telegraph was essential as a military establishment, essential to education and to social welfare.[15]

The Senate Committee on Post-Offices and Post-Roads of 1874, which numbered among its members such men as Hannibal Hamlin and Alexander Ramsey, said in its report on the telegraph:

> The Constitution devolved upon Congress the duty of transmitting all correspondence, including that by telegraph as well as that by mail.[16]

But to find the most careful and convincing statement of this point we must go back to the House Committee of Ways and Means in 1845. The Government had already built the first telegraph line, and the question of extending the service under Government ownership was before the committee. Here is a portion of its noble report:[17]

> The Government is authorized and required by the Constitution to carry intelligence. The functions thus devolved on the Government of performing for the people the office of universal letter carrier and news carrier, is a matter of the very highest consequence in every light in which it can be viewed. The bare fact that our ancestors refused to leave it dependent on individual enterprise or State control, and rested it expressly in Congress, abundantly attested their anxious sense of its importance, and their conviction of the impracticability of realizing the requisite public advantages from it otherwise than by giving it Federal lodgment

[14] Wanamaker pamphlet, pages 148–149.
[15] Senate Report No. 577, part 2, page 4.
[16] Senate Report No. 242, Forty-third Congress, first session.
[17] House Report No. 187, Twenty-eighth Congress second session, pages 1–3.

and administration. But though not anticipated or foreseen, these new and improved modes were as clearly within the purview of the Constitution as were the older and less perfect ones with which our ancestors were familiar, and there being no doubt entertained either on this point or as to the obligation of the Government to lay hold of the best and most rapid methods of transmission which the improvement of the age puts in its reach; steam power commended itself at once to adoption and has long been extensively employed both on land and water for the carriage of the mail.

It is not without full reflection that the committee insist on the principle that it was the duty as well as the right of the Government thus to avail itself, even at heavy additional expense, of the powerful agency of steam for the purpose of accelerating the mails. It would have been a gross and manifest dereliction to have permitted that vitally important concern, the transportation of the mail—a concern so anxiously intrusted by the Constitution to Federal authority—to lag behind the improvements of the age, and to be outstripped by the pace of ordinary travel and commercial communication. Such is the view which the Post-Office Department takes of its own obligation, and upon which it habitually acts. To be outstripped by private expresses is deemed discreditable to the Department, injurious to the general interests of the country, and a thing, therefore, not to be permitted.

This great and fundamental principle upon which the Department acts (of not being outstripped in the transmission of correspondence and intelligence) led necessarily to using the steam engine in the service of the post-office, and it must and will lead with equal certainty to the adoption of any other newly discovered agency or contrivance possessing decided advantages of celerity over previously used methods. The same principle which justified and demanded the transference of the mail on many chief routes, from the horse-drawn coach on common highways to steam-impelled vehicles on land and water, is equally potent to warrant the calling of the electro-magnetic telegraph—that last and most wondrous birth of this wonder-teeming age—in aid of the post-office in discharge of its great function of rapidly transmitting correspondence and intelligence.

If these strong words of wisdom, and the far-sighted prophecies of Professor Morse, and the stirring appeals of Henry Clay had been heeded, there would have been no telegraph question to-day, the great Wall street monopoly would never have been born, and the people would not have had to give fifty years of unsuccessful effort to the purpose of getting their will and their rights enacted into law in the shape of a postal telegraph.

II.

(2) *The evils of our present telegraph system are manifestly great.*—In the first place a large part of our people have no telegraphic facilities. A private company selects the best districts, builds its lines where the traffic will be large, and leaves the more thinly settled portions of the country without any service at all. A public enterprise, on the contrary, does not chiefly aim at dividends, but at efficient service of the public as a whole. The difference is strongly illustrated by the contrast between the Western Union and the Post-Office; the former has 21,000 offices, the latter has 70,000.* The policy of the Post-Office is the true one. Farmers and ranchmen are a benefit to the whole community. It is not their fault that it costs a little more to send a message 200 miles than 100. Distance is an accident entirely independent of the merit or demerit of the individual, and the burden of it should not be allowed to fall upon any individual, but should be borne by society. If

*The offices of rival telegraph companies are not included because they are mere duplications and do not represent new localities supplied with telegraph facilities; indeed the figures 21,000 and 70,000 do not disclose the full superiority of the Post-Office in respect to universality of service, because the 21,000 telegraph offices include all the offices in the cities, where it is often the case that a considerable number of telegraph offices are maintained in the district served by one post-office—the whole cluster of telegraph offices being really entitled to count only as one in a fair comparison of the extent of country and population served by the telegraph and the post-office, respectively.

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any difference is to be made, it ought to be in favor of the country districts, not against them, for it should always be an object of solicitude with the statesman to add to the advantages of country life, so as to counteract, as far as possible, the tendency to overcrowd the cities.

In the second place the rates are very high—so high that the telegraph is beyond the reach of the majority even of those who live in the favored localities where the companies condescend to open their offices. The private telegraph charges of America are more than double the public telegraph rates of Europe.[1]

The Western Union has endeavored to overcome the force of this tremendous fact by asserting that the rate is a matter of distance and that the distances are greater here, and tables of distances and charges were presented to committees of Congress for the purpose of proving the assertion. Unfortunately for the Western Union the Washburn committee consulted geographies and telegraph maps and found that the length of telegraph routes between the cities of Europe was strangely

[1] Telegraph rates in this country are 25 cents to $1 for 10 words, and 2 to 7 cents for each word in addition. The night rates are somewhat less; for example:

From—	To—	Day.		Night.	
		For 10 words.	For each extra word.	For 10 words.	For each extra word.
		Cents.	*Cents.*	*Cents.*	*Cents.*
Boston	Worcester	25	2	25	[illegible]
Do	New York City	25	2	25	[illegible]
Do	Philadelphia	25	2	25	[illegible]
Do	Chicago	50	3	30	[illegible]
Do	Denver	75	5	60	[illegible]
Do	San Francisco	100	7	100	[illegible]
New York	Chicago	40	3	30	[illegible]

In Europe the usual rate is about 10 cents for 20 words, and one-half a cent to a cent for each further word (House Report No. 114, p. 1, Switzerland; p. 2, Belgium; p. 4, France). See also Blair Committee, vol. 2, page 982, and Professor Ely in December Arena, 1895, page 50. In Belgium the rate for additional words is less than one-half a cent each, being 2 cents for each 5 words (Tenth Census, vol. 4). In Great Britain the rate is 6d. for 12 words, and one half-penny for each added word (Postmaster-General's Report, 1895, p. 35). In France the charge is 10 cents for 20 words, and 1 cent for each further word, regardless of distance, except that messages to the French Possessions in Africa pay 1 cent a word from the first word—20 words 2,000 miles for 20 cents (Tenth Census, vol. 4; House Report No. 114, p. 4; Senate Report No. 577, part 2, p. 22). The ordinary charge per message in Germany is 12 cents (Professor Ely in Arena for December, 1895, p. 50). The 20 words include address and signature, which President Green says will average 7 words, leaving 13 words clear message for 10 to 12 cents, with additional words at the rate of one-half a cent to 1 cent a word, as against 25 cents for 10 words and 2 to 7 cents per word in addition. The average charge per message in Great Britain is 15¼ cents, about half the average in this country. A comparison of average tolls, however, does not do full justice to the low-tariff country, because low rates increase the length of messages, as was clearly shown by the history of the Baltimore and Ohio company, the average of whose messages under the 10-cent rate ran up to 16 words. (Bingham Hearings, p. 76, testimony of D. H. Bates.)

A comparison of city rates leads to the same result. In Boston a city message costs 20 cents plus 1 cent per word beyond 10, or 90 words for $1. In Berlin the charge is 5 cents (initial fee) plus one-half a cent a word, or 190 words for $1, which is more than double the Boston service for the same money, after subtracting the 7 words for address and signature.

The Western Union is no better off when we compare its press rates with those across the sea. President Green told the Senate Committee on Post-Offices and Post-Roads that the press rate was 6½ cents per 100 words. (Senate Report No. 577, part 2, p. 23.) Like most of his statistics this does not agree either with the facts or with the rest of his testimony. Some papers in large cities, where there are a number to divide the expense of the same dispatch, may get part of their news for 6½ cents a hundred words,

minified in the Western Union statement, while the distances between American cities were mysteriously larger than those set down in maps and geographies. Here are some examples:

From London to—	Telegraph distances.	
	Western Union statement.	Truth.
	Miles.	*Miles.*
Dover	50	82
Plymouth	190	246
Paris	200	313
Reims	250	400
Hamburg	380	556
Munich	540	800
Berlin	560	722
Prague	600	958
Madrid	750	1,225
Rome	850	1,349
Naples	950	1,510
St. Petersburg	1,160	1,806

Not one single distance is correctly stated. It is necessary in nearly every case to add at least one-third, and often more than one-half of the stated distance to obtain the real distance. The sum of the stated distances was 15,724 miles, and the sum of the real distances was 22,578 miles, or almost one-half more than the Western Union's statement. To show the falsity of statements about American routes it was not even necessary to disturb the dust on the geography—the statement was its own refutation; for example, the distance from Memphis to New York was placed at 2,000 miles, while in other tables of the same Western Union testimony the distance was said to be 1,000 miles. So the distance from New York to Chicago was placed at 750 miles, and to Galena at

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but that is not the average rate paid by newspapers throughout the country, much less the average rate received by the Western Union per message of 100 words, which is the question at issue now. On the very same page 23 the same President Green illustrated the accuracy of his statement by saying: "We charge the New York Associated Press about 2¼ cents a word from New York to New Orleans, and one-eighth of a cent for each drop (22 of them), so that they get 1,500 words a day for about $1.87½ at each of those places." $1.87½ for 1,500 words is 12½ cents per 100, instead of 6¼ cents. But even this is not correct. Counsel for the people in this case went to the office of the superintendent of the Western Union and inquired about press rates, saying he had seen the above statement about a drop rate of one-eight of a cent a word between New York and New Orleans. The answer was: "I wish you'd tell me about those rates. We never heard of them. Our press rates are uniform all over the country, two-thirds of a cent a word in the daytime, and one-third of a cent at night. Several people have come in just as you have and asked about a drop rate of one-eighth of a cent. But we don't know of any such rate."

"The Baltimore and Ohio may have sent messages at such rates sometime," said a clerk.

"No," said the superintendent, "they never sent messages as cheap as that."

Counsel also sent an agent to the State street office of the Associated Press. They said they rented a wire, but it cost even more than ordinary newspaper work because the telegraph company thought ten papers could afford to pay more than one. In general, newspapers had to pay two-thirds of a cent a word, drop message or terminal just the same, for you have to have an operator at Worcester or any intermediate point to take off the dispatch just the same as at the terminal, and the operator is the main item.

On the aforesaid page 23, President Green says: "We sent 5,200,000 words of press sent; 200,000 messages of 30 words" (it should be 173,333 messages according to the arithmetic I studied), "and we got $1,800,000, so that we got about 20 cents per message of 30 words sent" ($10 per message according to my arithmetic); "but the amount delivered was 605,474,000 words, which, divided by 30, makes over 20,000,000 messages delivered" *(he did get that right)*. Now, $1,800,000 for 20,000,000 messages *would be 9 cents per message of 30* words delivered, or 30 cents per 100 words deliv-

1,400 miles, though Galena is only 185 miles from Chicago. Substituting the true distances in the comparison of telegraph charges in Europe and America, the committee obtained very different results from those of the Western Union statement. The rates and distances from Paris to thirty-odd cities all over Europe were placed in one table. A similar table was made with Berlin as a center. For the United States a table was made of the rates and distances from Washington to thirty-odd of our chief cities having distances almost identical with those in the tables of Paris and Berlin.. The conclusion of the committee from these tables, together with the corrected tables of the Western Union statement (rates and distances from New York to 61 American cities and from London to 29 cities in all parts of Europe, the cities in each table being chosen by the Western Union), was that the rate per mile in Europe was less than half the rate per mile in America. And the rates compared were for internal traffic in the United States and for international traffic in Europe. The cost of international communication is more than the cost of internal communication for an equal distance, because the receipts have to be divided among two or more nations each of which desires nearly or quite as much return as for an internal message, and the division itself entails additional expenses of bookkeeping, etc. When internal rates in Europe are compared with internal rates in America, mile for mile, the contrast becomes more glaring than ever; the committee found that the rate per mile in England was less than one-third the rate per mile in the United States, and in France less than one-fourth of our

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ered, including drops and terminals. Even this is below the truth according to the statements of the Western Union superintendent and the Associated Press, which are 66 cents a hundred day, and 33 cents night.

In Great Britain the press rates are 20 cents for 75 words day, or 100 words night, with a drop rate of 4 cents per 75 day, or 100 night. These extremely low rates result in an average charge of about 4½d. or 9 cents per 100 words—a press tariff which is about one-fourth of ours and is a little too low, about 11½ cents per 100 words being necessary to pay the cost of the service, according to the forty-first report of the English postmaster-general (1895), pages 35, 36, and 37, where the facts are fully given (the cost being found by adding the £300,000 to the receipts from 650,000,000 words at 9 cents a hundred).

In Germany telegraph lines are leased for press purposes at the rate of $4.80 a day (7 a. m. to 9 p. m.) and half rate, or $2.4, per night; this is for a Morse line. A Hughes line rents for $9.60 a day and $4.80 a night. The Hughes system has double the carrying capacity of a Morse line in the same time. (Tenth Census, vol. 4.) If 1,500 words were sent over a Morse line the cost would be 32 cents per 100 words by day line, and 16 cents per 100 by night. If there were 22 drops, as in President Green's New Orleans illustration, the average cost for each town or city served with the news would be about 1 per cent per 100 words for rent of the telegraph line.

To rent a line from the Western Union costs $20 a mile for a day line and $10 a mile for a night line, about $25,000 a year, or $70 a day for a line from New York to New Orleans. With 1,500 words a day, the cost would be $4.66 per hundred words by day and $2.33 per hundred by night, or an average cost for each town of about 15 cents per 100 for rent of the telegraph line. A line from Boston to New York costs $4,500 a year, or $12 a day, and one from Philadelphia to Chicago costs $14,000 a year, or $40 a day. The company supplies only the line and the instruments; the lessee must find the operators, clerks, etc., and perform all the labor of collection and transmission.

In Germany the rental is not by the mile but by the line—the rate being averaged for long lines and short ones, so that a group of papers in a distant part of the Empire pays no more for its news over a rented line than a group of papers near the capital.

Looking back over the facts set forth in this long note it is no wonder that Postmaster-General Creswell declared "the average rates here to be one and one-half to four times as high as those of Europe," including Russia, Turkey, and all; nor that Gardiner G. Hubbard, one of the highest authorities in the country, told the Senate Committee on Post-Offices and Post-Roads that "rates are twice as high here as in England." (Senate Report No. 242, Forty-third Congress, first session, p. 25.) Rates have fallen on both sides of the water since that report was made, but the statements it makes are still true, as the facts of this note abundantly prove.

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French telegraph tariff is only one-fourth of ours. In Great Britain the average pay of a telegraph employee was $360, according to the Tenth Census, vol. 4, and it has been rising ever since. In Germany the average was $300. According to the same authority the salary of telegraph employees throughout Europe averaged $320 each for the year 1880. The president of the Western Union stated in the Blair committee that "the aggregate salaries from president down are (1883) between $4,000,000 and $5,000,000 a year,"[6] and that the "number employed and paid by the Western Union Company is about 25,000," which would make the average salary $200, showing that European telegraph wages are 60 per cent higher than ours, according to Western Union data. Even if the Western Union could reverse the result of its statements and intensify the reversal so that wages here should be made to appear twice as much as in Europe, still the defense would be no better off, for it claims that the American operator does twice as much work as the European,[7] so that the company could pay twice the European salary without making the cost per message any higher than across the sea; and if we place this statement as to superior efficiency alongside of the truth in respect to salaries, we should expect the cost of a telegram here to be only half as much per mile as in France, instead of four times as much.[8] The truth is, as shown in the notes 1, 3, 5, 8,

even when they prepare tabulated data respecting their own employees. Their president tried to convince Congress in 1884 and in 1890 that they paid their operators an average of $65 a month, but there was abundant evidence that the average was not much over half that sum, and Mr. George caught the president squarely in the act of self-contradiction by showing that on his own data the $65 average would make a total for labor of operators alone that would be several millions more than the entire reported expenditure for labor, to say nothing of other employees, whose pay, if added, would make a total twice the one reported by the company. (See Blair Committee, vol. 1, p. 908.)

[6] Blair committee, Senate investigations on "Labor and Capital," volume 1, page 901.

[7] Blair committee, volume 1, page 890. Examination of Dr. Norvin Green, president Western Union:

Q. Comparing operator with operator, is the American operator superior to the English?—A. Undoubtedly he is.

Q. And does about twice as much work, I understand?—A. I think, taking them in the aggregate, that they do twice as much work as the Englishmen.

Even this is not the extent of our wonderful dexterity, at least in certain localities. When Mr. Orton was president of the Western Union he wrote to the Postmaster-General that "the working force in New York does nearly four times as much in proportion to number as the working force in London." (Senate Report, No. 242, Forty-third Congress, first session, p. 25.)

[8] The fact is that the Western Union statements are not correct either in regard to wages or efficiency. The Tenth Census tabulates in vol. 4 the telegraph statistics of Europe and the United States for 1872 and for 1880. Postmaster-General Creswell also tabulates the facts for 1868 to 1872 in his report for the latter year, page 160. According to the census 13,700,000 messages went over the wires in the United States, and the employees of the telegraph companies numbered 10,000, giving 1,370 messages per employee. In Europe there were 46,797 employees and 55,265,298 messages, or 1,1[illegible] messages to each employee. In 1880 the number of messages per employee was 2,100 in the United States and 1,420 in Europe. (Many employees who devote more or less of their time to post-office duties are included in the European returns of employees.) These figures indicate that the companies here could pay about one-third higher salaries than Europe without raising the cost per message above the European rate. The tables show that in 1872 the average telegraph salary in the United States was $3[illegible] against $290 in Europe ($288 is the census figure, $291 the Postmaster-General's) and in 1880 the average telegraph wage was $327 in the United States and $320 in Europe—a very creditable increase in Europe and a considerable fall in America—and this was prior to the reductions which constituted a part cause of the great strike of 1883. The reduction of wages here and their rise in Europe has continued down to the present time, so that now (1895) the average is about $300 in the United States and $350 in Europe, with about one-third more messages per employee here than in Europe; wherefore the indications are that so far as labor is concerned the telegraph service can be performed here at rates one-third lower than in Europe, since our

hat telegraph wages are lower here than in many parts of Europe, hile the amount of business done per employee is larger here than cross the sea, so that the real cost of transmitting messages is lower here than in Europe—a state of things, however, which results from conditions not altogether creditable to us (see note 3, p. 22).

Expelled from this defense of high cost, the company ventures one more plea in the hope of justifying its charges, viz, that Europe makes a deficit. This plea also has been investigated, and it was found that France (the country showing the strongest contrast to Western Union charges, and paying the highest wages) was nevertheless realizing a profit on its telegraph business of more than a third of the gross receipts.[9] It was further ascertained that England, Switzerland, Sweden, Prussia, Belgium, and other countries make a profit on their telegraph systems;[10] that Europe, as a whole, did the same;[11] and that the Western Union had ciphered out a loss for Europe by adding the cost of construction into the operating expenses.[12]

The truth is that rates are higher here than in Europe because private enterprise aims at dividends while public enterprise is satisfied to serve the people about at cost. The contrast is finely illustrated in the case of Great Britain, the 18,000,000 messages sent in 1873 under public ownership costing the public just what 9,000,000 messages would have cost under the displaced private ownership,[13] and in 1886 and 1887 after the further reduction in 1885, it cost the people only a trifle over six-tenths as much for each million messages as in 1873–74, and about three-tenths as much as in 1869 under private ownership.[14] How different this record from that of the Western Union Company, which has fre-

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companies receive one-half more service for $1 expended in wages than the European telegraph systems. (This would much more than offset any possible difference of distance even if it existed to the full extent of the Western Union's falsified tables, see note 2.) It must be kept in mind that the differences in "efficiency" above mentioned are not to be taken in disparagement of European workers. Individual quickness and aptitude constitute but one element in the problem. The number of messages per worker depends, on the whole, much more upon the density of the business, the hours of labor, and the distribution of offices and employees than upon any differences in individual industry or capacity. This is clearly shown when we examine the subject in detail. For example, in 1880 France had 1,925 messages for each employee; Great Britain, 2,625, and Russia only 760. In the United States the average was 2,100 for the entire business—2,750 for the Western Union, but for the companies outside of the Western Union it was only 565 messages per worker, considerably less than even the snowy wastes of Russia have to show; so that it is not a question of the superiority of the American citizen. The French "efficiency" is undoubtedly considerably higher than the census figures above given, for two-thirds of the employees constituting the divisor in the calculation are engaged more or less of their time in the postal service aside from the telegraph. The Western Union is fond of tickling the ear of Congress and flattering the patriotism of the people with all sorts of complimentary statements about the efficiency of their service, but the cold fact is that the Western Union obtains its large percentage of messages per worker, first by selecting the localities where business will be more dense, instead of sending the telegraph into every district, as in many of the nations of Europe; and second, by working its employees very long hours.

[9] Senate Report No. 577, part 2, page 26; see also House Report No. 114, page 4.

[10] House Report No. 114, pages 2, 5, 24, 88. The average yearly profits for a period of five years were $2.58 per mile of wire in France, $4.82 in Prussia, $8.27 in Belgium, $2.26 in Switzerland. For the English profits see note 12 in Part I of this discussion.

[11] House Report No. 115, page 4, middle. See also the table of European statistics given to the Bingham committee by President Norvin Green in 1890, which shows $000,000 surplus for the 18 nations whose receipts and disbursements are given. (Bingham Hearings, page 39.)

[12] House Report No. 115, page 4, middle.

[13] Senate Report No. 242, Forty-third Congress, first session, page 9.

[14] Forty-first *Report of England's* Postmaster General, 1895, and Mr. Morley's figures *to the House of Commons*, February 11, 1895.

quently raised rates, at the very time when the cost of sending messages was rapidly diminishing,[15] and has not reduced them at all except under compulsion of competing companies or the fear of an overpowerful agitation for a public telegraph.[16] One of the most significant facts of the Tenth Census is the statement in the fourth volume respecting the profits of the telegraph service—"the per cent of profit to cost is 2.9 per cent in Europe and 29.5 per cent in the United States"—a tenfold profit without going below the surface of the Western Union returns. We shall have occasion hereafter to dissect the said returns, and we shall find that the real profit is far greater than the reported profit; there is reason to believe that it has been as high as 414 per cent in a single year—i. e., 414 per cent on the real investment.[17]

To go more fully into the subject: The real reasons why rates are too high in this country are three—needless expenses, illegitimate expenses, and overgrown profits. Underneath and behind all these is the reckless power and greed of a great corporation left free to act by inert and conspiring Congressmen; this is the underlying, ultimate cause that produces needless and illegitimate expenses and unjust profits which are the immediate causes of excessive rates. We cannot expect a private company to avoid the wastes incident to competition or the effort to guard against it, which not only makes the cost of transmission greater than it need be, but also entails many needless expenses entirely aside from the work of sending messages and maintaining the lines—only a national telegraph system can avoid such losses; neither can we expect a private corporation to do business without a profit—only the Government or a body of philanthropists will do that; but we have a right to

[15] House Report No. 6, Forty-second Congress, third session (1872), page 3, where the Committee on Appropriations tabulate some of the changes in the Western Union tariff. Here are a few specimens:

From New York to—	Rates.	
	1852.	1868.
Cleveland	$0.50	$1.00
Buffalo	.40	.75
Cincinnati	.75	1.00
Providence	.20	.30
St. Louis	1.45	2.00
New Orleans	2.40	3.25

Again, the reports of the Western Union show that from 1887 to 1890 the average charge increased 2 cents per message, while the average cost decreased half a cent per message, and the admitted profits of the company rose from $4,000,000 (on $17,000,000 receipts), to $7,333,333.33⅓ (on $22,333,333.33⅓ receipts), or from 23 to 32 per cent of the gross receipts. Perhaps the most striking instance of the solicitude of the Western Union for the public welfare is the case described on page 53 of the second part of Senate Report No. 577, in which the Western Union swallowed a cable company and then proceeded to make the rates eight times as high as they were before the combine.

[16] Senate Report No. 577, part 2, page 52, reduction because of discussions in Congress; Blair testimony, volume 2, page 1272. Gould's war on the Western Union brought rates down. Bingham hearings, Green's testimony, page 61, on the Baltimore and Ohio war, saying: "We have never undertaken to crush out any opposition with low rates. They have generally been butting against us with low rates, and their general drive has been to compel us to buy them off on the basis of the damage they could do us. Some of them have been successful. The last formidable competitor we had was the Baltimore and Ohio. They came into the field to smash things and they did." D. H. Bates, manager of the Baltimore and Ohio lines, says the Western Union did reduce its rates even below those of its competitor in the effort to crush it (pp. 73, 74, Bingham Hearings).

[17] L. T. U. hearings, 1894, page 59.

expect that even a private corporation will be satisfied with a fair profit on the actual investment, and that it will not falsify its accounts by incorporating in its statement of operating expenses such alien items as the cost of new construction, of buying up rival lines, of lobbying city councils and legislatures, of paying exorbitant rentals for leased lines, interest, profit, and running expenses all in one lump called a "rent," etc., in order to make the cost of sending messages appear much greater than it is. That is, we have a right to expect this if it is reasonable to expect a private corporation to deal honestly with the public, which some may believe to be doubtful, while others who understand corporation life from the inside, or from close observation, will hardly think the subject open to question.

There is every reason to believe that telegraph rates could be reduced in this country to half the present charges and still leave a good margin of profit. The Baltimore and Ohio Company had a 10-cent rate for a long time on 19 routes and made a profit on the business.[18] The Western Union itself has frequently made an equally moderate rate under the pressure of competition,[19] and even without such pressure it carries from New York to Bradford, between the oil exchanges, a distance of 400 or 500 miles, at the rate of 10 cents a message.[20] The company has voluntarily accepted as "satisfactory" rates less than one-fifth of its ordinary charges, and covering a business amounting to many hundred thousand dollars a year.[21] And finally the Western Union carries many millions of messages for the press at an average of 30 cents per 100 words or 6 cents for 20 words.[22] Turning to other sources of information we find Postmaster-General Wanamaker proposing that "charges in any one State and between any stations not more than 300 miles apart shall not exceed 10 cents for messages of 20 words or less, counting address and signature, nor over 25 cents for any distance under 1,500 miles, nor over 50 cents for any distance."

"Upon what basis do you make the estimate of the rates you give us?" asked the Bingham committee.

"Mr. WANAMAKER. Largely by the rates that were current when

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[18] Bingham hearings, page 21; Wanamaker's testimony, pages 61–62; President Green's testimony saying the Baltimore and Ohio lost money, and pages 72–76, testimony of D. H. Bates, manager of the Baltimore and Ohio Telegraph Company, contradicting President Green and affirming that the Baltimore and Ohio did make a profit in spite of its low rates, and that the Western Union succeeded in buying up the Baltimore and Ohio lines, not because they proved unprofitable, but because disaster overtook the road in other departments, and it sold its telegraph business as the most available source of realizing the funds necessary to right itself. The following are examples of the Baltimore and Ohio tariff: New York to Portland, Me., and intermediate points, 10 cents; New York to Philadelphia, Baltimore, and Washington, 10 cents; New York to Chicago, 15 cents; New York to St. Louis, 20 cents; to New Orleans, 50 cents; to Galveston, Tex., 75 cents. The average charge on all messages was 16½ cents. (Bingham hearings, pp. 76, 62.)

[19] For example, to keep pace with the Baltimore and Ohio (p. 62, Bingham hearings, testimony of President Green). To fight a railway line the Western Union reduced the rate from Jackson to Natchez via Vicksburg to 10 cents for 10 words and 1 cent for each further word. (Blair Commission, vol. 1, pp. 898, 900.)

[20] Senate Report No. 577, page 59; "as they fix their own rates in this case they make money at those rates," page 60. The company also carries from New York to Washington for 15 cents, page 60.

[21] House Report No. 6, page 6. The signal service business, which would have amounted to $644,648 at ordinary rates (and $264,278 at the Government rate of 25 cents for 25 words over each circuit of 250 miles), was done for $123,662, "the rates being voluntarily accepted by the Western Union as satisfactory." That was twenty years ago, but as the cost of transmission has fallen still more than the company's charges the contrast remains good.

[22] See *note 1 above.*

there was competition, before the Western Union had absorbed the other lines.

"Q. Don't you think it would be possible to give a lower estimate?

"Mr. WANAMAKER. I think it would. It would be such a benefit to get 20 words for 10 cents that I am afraid if rates were lower we would be in the same position as the English lines were in the beginning. They were overwhelmed with business. My own judgment is, upon consultation with intelligent experts, that a lower rate than this can be fixed, but in the initiative it seems desirable not to attempt too much."[23]

A syndicate of New York capitalists offered to accept Postmaster-General Wanamaker's rates, building the lines to connect the post-offices, supplying the operators, charging the rates above named, and giving the Government 2 cents on each message to pay for its collection and delivery.[24] In the spring of 1895 Mr. Wanamaker told the counsel who is writing the people's brief in this case that he thought a uniform 10-cent rate for 20 words, regardless of distance, could be established in this country and yet leave the system self-sustaining. The experience of Europe, and the Baltimore and Ohio's success with low rates in spite of tremendous competition, leaves little room to doubt the correctness of Mr. Wanamaker's conclusion. Some facts would indicate the possibility of a still lower rate. At the annual meeting of the National Board of Trade in January, 1888, Hon. R. W. Dunham, of Chicago, described the operations of a telegraph company doing business between Milwaukee and Chicago, and of which Mr. Dunham was a stockholder. The company began with a charge of 1 cent a word, and within two years paid back to the stockholders 90 per cent of the money they had paid in. Then they reduced the rate to one-half cent a word or 5 cents a message, and at this rate paid over 40 per cent on the entire stock. This went on for two years and then "we doubled our stock from $14,000 to $28,000, making it one-half water, and still the result is about the same, and from 25 to 40 per cent is still paid back on the 5 cents a message paid by the patrons."[25] Such results with a business all the time under fire of a fierce competition, clearly prove the possibilities of a low tariff. This Milwaukee fact, together with the Western Union rates for Signal Service and press messages, points to the conclusion that a 10-cent rate would be more than sufficient even with present methods. And if recent inventions (to be hereafter described) were adopted, we would be able, according to very high electrical authorities, to send 1,000 words from New York to Chicago at a cost of 50 cents—a service for which the Western Union charges $31. With the saving effected by this new method, the further saving of rent, fuel, light, labor, etc., resulting from a thorough combination of the telegraph business with the Post-Office, freedom from competition or the menace of it, the absence of watered stock, magnate salaries, dividends, lobby expenses, purchases of blackmailing schemes and rival franchises, etc. (all of which matters will be dealt with in detail in subsequent parts of this brief)—with all these savings and the enormous increase of business that would come with low rates,[26] it is not unreasonable to

[23] Bingham hearings, 1890, page 6, and Wanamaker's argument on the telegraph, page 6, *et seq.* Mr. Wanamaker told the committee that his plans would save the people one-half the money they have to pay for telegraph service at existing rates. (Bingham hearings, p. 14.)

[24] Bingham hearings, testimony of John Wanamaker and J. M. Seymour. See *also* Wanamaker's argument, pages 6, 7.

[25] Wanamaker's argument, pages 68-70.

[26] See the third and fourth pages of note 6, Part I of this discussion.

uppose that a uniform 5-cent rate would be amply sufficient to sustain 'telegraph system owned and operated by the Government under good ivil-service regulations.

It follows as a natural consequence from narrow facilities and high harges, that only a very small portion of our people are able to use he telegraph. President Green says that only a million people use the elegraph at all, and that "46 per cent of the total business is purely peculative—stockjobbing, wheat deals in futures, cotton deals in itures, pool room, etc.; 34 per cent is legitimate trade; about 12 per ent of the business is press business, and about 8 per cent of it is ocial."[27] A stronger argument for public ownership could hardly be iade. It is an outrage upon civilization that one of the greatest iventions of all the ages should be permitted to be captured by cororate greed, kept out of reach of the great mass of the people, and eserved for uses in which the business of gamblers forms the chief art, and is even given priority of transmission over all other business, s is well known to be the case on the Western Union lines. A ompany that manages the telegraph with so little wisdom and pubic spirit as that ought not to be allowed to control it at all. Think f it! Fifty years since the lightning was harnessed to language nd literature, and the people can not even yet avail themselves of the iscovery; fifty years, and gamblers are still the main beneficiaries; ifty years, and Wall street is still in possession. It is time a suit in jectment were brought. It is time the telegraph were taken from the amblers and given to the people. The electric current belongs to the eople and must be made available for their use. Our 5, 6, or 8 per cent f social messages must be changed to 50 or 60 per cent, as in France, ngland, Belgium, Switzerland, and other countries of Europe and ustralia,[28] and our 46 per cent of gambling must be reduced to 20 per ent at the start, and afterwards, when partnership and mutualism have ttained their perfect form, to zero absolute.

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[27] Bingham hearings, 1890, pages 41, 56. See also Senate Report No. 577, pages 5, 16, part 2, pages 63, 244. President Green told the Senate committee in 1884 that less than 1 per cent of the people used the telegraph;" "only half a million" used ; "about 5 or 6 per cent of the messages were social." President Green wished ongress to believe that the narrow patronage of the telegraph and the predomiance of speculative use ought to prevent the Government's undertaking the business. is idea was based on the assumption that the use of the telegraph would remain e same under public ownership as it is now—an assumption which is conclusively roved to be false by the whole history of the telegraph in Europe and Australia. See note 6 to Part I, and note 28 to this part of the present discussion.) Even if e president's assumption were true it would not prove his case, for besides its lack f universality, there are many other evils of watered stock, overgrown profits, njust discrimination, ill-treatment of employees, interference with the freedom of he press, etc., for all of which the cure of public ownership is demanded.

[28] House Report No. 114, page 42; Senate Report No. 577, page 16; I. T. U. hearings, 894, pages 17, 24. "In Europe, where the cheap system prevails, two-thirds of all ispatches are on social or family matters" (House Report No. 114, p. 42). "In elgium when the rates were high only 13 per cent of messages were on social atters; at low rates, 59 per cent" (Senate Report No. 18); afterwards, 63 per cent I. T. U. hearings, p. 17). See further the third and fourth pages of note 6 to Part of this discussion. Great Britain, with about half the population of the United tates, sends about the same number of messages over the wires. France and witzerland also send more messages per capita than we do.

Telegrams per 100 persons.

reat Britain	184
witzerland	127
rance	108
nited States	95

A similar story is told by the contrast between the use of the telegraph and the

III.

In the fourth place, the Western Union defrauds the public by wa ing its stock. This process, so much admired by corporations of ev class, renders it impossible to reduce rates to a just level—the level a fair remuneration for the labor involved and the capital actu invested.

The people must pay a profit on a large amount of capital that ne was invested, and on another large amount that was invested, but dead, as well as on the capital really alive in the plant and entitled sustenance. And if the people wish to buy the telegraph lines th will have to pay for all the millions of water just the same as if th represented a real investment. A corporation may spend a milli building its plant, issue five millions of stock, put its charges hi enough to pay dividends on it all, and if the Government exercises i power of eminent domain the courts will award the corporation fi millions compensation, because the stock, or part of it, has been s to persons who did not have anything to do with the overissue of stoc and who are deemed by the law to be "innocent purchasers," althou in nine cases out of ten they knew all the facts of the case. Geor Gould testified recently that corporations have to water their stock. capitalists will not invest. This is not true of all capitalists, but th statement shows how innocent the majority of those who put the money into corporations really are.

The Western Union reports its stock at $95,000,000, and bonds $15,000,000—$110,000,000 of capitalization. It claims 190,000 miles of line, 800,000 miles of wire, and 21,360 offices. The figures, however, are false. Three-fourths of the offices are railway offices maintained by the railways. And the mileage appears to have been obtained by adding together the mileage of all the lines the Western Union has ever built, bought, or leased, a large portion of which has long since ceased to exist, and another portion, consisting of useless parallels constructed on purpose to be bought by the Western Union, remains on its hands as mere lumber. The total land plant in actual operation under Western Union control is probably less than 100,000 miles of poles and 400,000 miles of wire, and the larger part of this is not in good condition. The total value of the plant, offices and all, appears to be about $20,000,000.

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post-office. Great Britain, 1 telegram to 30 letters and postal cards; Switzerland, 1 to 30; Belgium, 1 to 23; France, 1 to 23; United States, 1 to 42.

Communication by telegraph in the best countries of Europe bears a much larger proportion to communication by post than in this country. This is not due to dearth of letters in Europe, but to better use of the telegraph, as the former table shows, and as is proved directly by the world's postal statistics, which place the letters and postals per capita in England and France above the number here, and in Switzerland about the same as here. In western Australia and in New Zealand the letters and postals per capita are more than twice the number here, but counsel was not able to obtain precise data as to the use of the telegraph in those countries. (See data in English postmaster-general's report, 1895, p. 35; Canada Yearbook, 1892, p. 300; Postmaster-General Wanamaker's report, 1892, p. 874.) Taking newspapers, etc., into account, the United States comes next to Great Britain in the use of the post-office (Wanamaker, 1892, p. 872); but, considering the use of the post-office for the purposes of personal communication, a considerable number of nations outrank us.

The change of relative use that has followed public ownership of the telegraph in England is as remarkable as any of the preceding facts. In 1866 there was 1 telegram to 37 letters in Belgium with a government telegraph, and 1 telegram to 121 letters in England with a private telegraph. (House Report No. 114, p. 7.) Now it is 1 to 23 in Belgium and 1 to 30 in England—nearly 300 per cent relative gain due to the change from private to public ownership, supposing the gain in Belgium to represent the ordinary development of business without change of condition.

tracting the $15,000,000 of bonds, we have $5,000,000 of property ch the stockholders own after paying their debts—$5,000,000 as the l tangible basis of $95,000,000 of stock.[1] The evidence of all this is minous and convincing. Let us examine it.

n 1860 a telegraph line was built from Brownsville, Nebr., 1,100 miles alt Lake City. Charles M. Stebbins, a well-known telegraph builder, structed 475 miles on the eastern end of the line, for $67 a mile. western end was more expensive, being built, according to Mr. bbins, at a large profit to the contractors. The whole line cost 7,000, overcharge and all. On this expenditure $1,000,000 of stock issued in the name of the Pacific Telegraph Company, which was ied entirely by men prominent in the Western Union. This Pacific npany was then absorbed by the Western Union, $2,000,000 of West- Union stock being issued to pay for the $1,000,000 of Pacific stock ch was itself about all water. After this the stock of the Western ion was trebled, so that an original expenditure of $147,000 (half of ch was itself a fraud) came to represent $6,000,000 of Western Union k.[2] The Western Union is not satisfied with ordinary homeopathic ition of capital; they believe in the high potencies. The most amus- part of it all, to the Western Union folks, is the fact that the enditure of $147,000 was nearly three times repaid by a bonus of ,000 a year from the United States Government for a period of ten rs[3]—$400,000 in all, or more than five times the actual value of the le line; $400,000 plus $6,000,000 of stock, or $6,400,000 that ought to have cost, and was not worth, over $75,000—84 parts water to 1 olid.

n 1884 the Senate Committee on Post-Offices and Post-Roads re- ted as follows on Western Union water:

1863 its capital stock was only $3,000,000, and even of this amount (small as it s in comparison with the present [1884] capital stock of $80,000,000) it is quite in that at least five-sixths consisted of what is known in stock manipulations as r. The original line of the Western Union was from New York to Louisville, Buffalo, Cleveland, and Cincinnati, and was constructed at a cost of about $150,000. rly acquired, by purchase at very low rates, the property of embarrassed West- telegraph companies owning lines from Buffalo to Milwaukee, and from Cleve- to Cincinnati, and built a line from Pittsburg to Philadelphia, but even then stual cash investment is affirmed, by those who have carefully investigated the ect, not to have exceeded $300,000.

1863 the stock was doubled by a stock dividend, and during 1863–64 $5,000,000 added to represent extensions and purchases of new lines paid for in stock. capital being thus swollen to $11,000,000, was in 1864 again doubled by a stock lend, and thereby made $22,000,000. The year 1866 was memorable for new con- ations, the stock having been increased to $41,000,000 by the issue of $19,000,000 w stock. Since 1866 the stock capital has been carried up to $80,000,000, partly e issue of stock for the purchase of new lines, but mainly by the three follow- stock dividends: In 1879, $5,060,600; 1881, $15,526,590; and $4,320,000; total, 307,190. It is not necessary to comment upon stock dividends, the nature and of which are well understood. In respect to the issues of stock for purchases er lines, the prices paid have no relation either to the cost or to the earning ity of the property. The purchases were influenced, in some cases, by the to get rid of competition, and in others by the fact that the persons control- the management of the Western Union had large interests in the property pur- d. The higher the prices paid, the greater were the gains of individuals in ol of the Western Union.[4]

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r. Charles M. Stebbins told the Washburn committee in 1870 that Western n stock had had eleven parts of water added to it (House Report No. 114, p. 82), t now seems to have eighteen parts of water to one of solid.

mate Report No. 577, pages 4, 5. Speech of Senator Hill in the United States e, January 14, 1884. The Voice, May 30, 1895.

id.

nate Report No. 557, page 4, et seq.

ave Committee, November 15, 1882).

In 1858 the Western Union had a capital of $385,700. Eight years later th had expanded to $22,000,000, of which $3,322,000 was issued in purchase of e ing lines, while nearly $18,000,000 were issued as stock dividends. This was t attempt to spread out an increased paper capital which should hereafter a plausible pretext for imposing on the public an oppressive tariff of charge next step was the purchase of the United States Telegraph Company, for whi pose $7,216,300 of stock was issued, an amount alleged to be five times the tru of the property. Next came the absorption of the American Telegraph Co The stock of that company was almost as much inflated as that of the W Union, and amounted, water and all, to $3,833,100; yet $11,833,100 of Western stock was issued to get possession of that line.

Thus another illustration is furnished that in such enterprises competition ends in combination, and the public are ultimately obliged to pay for th struction of duplicate lines which are not needed and are only constructed purpose of forcing a divide of the enormous sums charged the public for a service which is a natural adjunct of the postal service.

These are not the words of enthusiastic reformers, but of hardh business men, thoroughly familiar with corporation methods fr side knowledge—it would puzzle even our best reformers, howe outtalk these business men on this subject of the telegraph. The proceeds:

Later the "American Union," whose actual value was about $3,000,000 (fr and all), was absorbed, together with the Atlantic and Pacific Company (als about $3,000,000, franchise and all), and in the consolidation the American was put at $15,000,000 and the Atlantic and Pacific at $8,400,000, while in a absorb in dividends the enormous earnings which they were levying on the a further increase of $15,000,000 was made under the pretense of issuing represent surplus earnings previously invested in the plant.

Of course such evidence of what the public would stand in the way of te charges was immediately followed by a new strike, in the form of a "co company," "The Mutual Union." This company was started on a basis of capital, which almost immediately increased to $10,000,000, without consid and, as appears from proceedings in court by a stockholder, the directors contract with a credit mobilier construction firm in which they were intere which $4,000,000 in bonds and about $10,000,000 in stock were guaranteed structing lines and plant valued at $3,000,000, and naturally, things being de thus far, negotiations were opened with the controlling spirits in the Wester

The following statement of Western Union transactions will give a od idea of their methods:

TABLE I.[7]

iginal investment	$150,000
iginal capital (1852)	240,000
pital stock (1858)	385,700
ownsville line worth $75,000, bought by issuing stock	2,000,000
53 Western Union plant worth $500,000, stock	3,000,000
ock dividends (1863)	3,000,000
Total stock (1863)	6,000,000
ock to buy other lines	3,322,000
ock dividends	1,678,000
Total (1864)	11,000,000
ock dividends	11,000,000
Total (January, 1866)	22,000,000
ock to buy United States Telegraph Company, worth $1,443,000	7,216,300
ock for American Telegraph Company, worth perhaps $1,500,000	11,833,100
Total (1866)	41,049,400
ock dividends	5,060,000
ock for American Union and Atlantic and Pacific companies (worth together about $3,232,000, aside from the franchises) over $23,000,000, but as Western Union already owned over $4,000,000 of Atlantic and Pacific, the new issue was only	19,080,000
ock dividends	15,000,000
Total (1884)	80,000,000
ock for Mutual Union worth about $3,000,000	15,000,000
Total stock (1895)	95,000,000

Here we have a clear record of $60,000,000 of stock representing less ıan $10,000,000 of actual cost, and $35,000,000 of other stock repre- ınting a value not ascertainable in detail. This $35,000,000 chiefly ɔnsist of stock dividends, and most of it is probably water. The ational Board of Trade evidently so regards it, and it stands to reason ıat a corporation which issues $60,000,000 of stock for $10,000,000 of vestment in the purchase department, would not come any nearer to lid issues in the dividend department.

If the same principle—I beg the word's pardon for using it in this nnection—if the same rule has governed both departments, the pres- ıt capital stock of $95,000,000 would represent a total expenditure of ɔout $16,000,000, which added to the $15,000,000 of bonds,[8] would ake a grand total of $31,000,000 as the actual cost of the Western nion system. Many of the lines, however, were utterly useless dupli- ıtions built solely to be bought off by the Western Union,[9] and nearly

[7] See Senate Report No. 577, N. B. T. and Blair Reports above cited—also I. T. U. arings, 1894, the Bingham Report, 1890, and the reports of the Western Union.

[8] The bonds have been issued at various times to cover expenses that could not be ɔt with stock. It has sometimes required something more than Western Union ɔck to buy competing lines and whenever hard cash has been needed in larger ıantity than that supplied by the regular income, an issue of bonds has been sorted to.

[9] For example, the American Union and the Mutual Union. Jay Gould used the rmer company to fight his way to the mastery of the Western Union. Having con- ɔl of the American Union he opened a vigorous war on the Western Union, reduc- g rates 30 to 60 per cent and damaging the old monopolists so much that they were ıally compelled to take the new pirate for their master, buying his property at veral times its value, and guaranteeing 5 per cent on Gould's Atlantic cable stock, ansactions which are said to have netted Gould $15,000,000 to $18,000,000. (Blair ɔport, vol. 2, p. 1272, testimony of D. H. Craig, a high authority in telegraph ma- ıs, *and thoroughly familiar* with Western Union history.)

all the lines are much depreciated in value, as we shall show pretty soon. Let us first determine what value the system would have if in good condition.

In the United States we have evidence from the Western Union and from outside of it.[10] In his "History of the Electric Telegraph" (1866) Mr. George B. Prescott, an officer of the Western Union Company, places the average cost of the Western Union's lines at $61.80 a mile. As the company had 2 miles of wire to each mile of poles in 1866, the division of cost was probably about $84 for the first wire and $40 a mile for the second. In his report for 1869 President Orton says that $1,238,870 had been spent in three years for the construction of 7,968 miles of poles and 18,127 miles of wire—about $100 a mile of single-wire line, and $40 a mile of additional wire—or less than $70 per mile of wire on an average of the whole. For the year ending June 30, 1894, President Eckert reported the construction of 1,300 miles of new poles and 22,000 miles of new wire, one-half of it copper, at a total cost of $557,021, or $21 a mile of wire. In the report of October, 1895, President Eckert says that $574,639 was spent during the year in constructing 817 miles of new pole line, and 15,748 miles of new wire, two-thirds of it copper—about $75 per mile of single line and $35 per mile of additional wire. Colin Fox, a Western Union builder, testified that he had built lines for the company from 1868 to 1876, constructing 500 to 800 miles of poles in Michigan (some of it two or three wire, but generally one-wire line) at a cost of $75 a mile, and $30 a mile of additional wire.[11] Col. John C. Van Duzer, superintendent of construction for the United States military lines, has built 4,000 miles of single-wire telegraph line in Texas, Indian Territory, New Mexico, Montana, and Dakota since the war, at a cost of $50 a mile for the materials; the troops did the work, which would have cost, according to Van Duzer, $25 a mile. An additional wire, he says, would cost $30 a mile.[11] Mr. Charles M. Stebbins, an experienced telegraph builder, told the Washburn committee that he had built many hundreds of miles of one-wire line for $50 to $75 a mile.[13] In 1884 President Green testified that the

[10] The cost of construction has been greater in Europe than in this country. In France and Belgium the Government built telegraph lines at a cost of $65 per mile of wire, averaging about three wires on each line of poles. In Prussia the cost of three-wire lines was $70 per mile of wire. In Bavaria the cost was $71 per mile of wire. Even in the mountains of Switzerland and across the wastes of Russia the cost is said to be but $100 a mile on a two-wire line. For European statistics of construction see House Report No. 114, page 88, and Senate Report No. 18.

[11] Senate Report, No. 577, page 6.

[13] House Report, No. 114, page 81. The details are as follows:

Cost per mile of one-wire line.

Location.	Length.	Cost.
	Miles.	
From St. Louis to St. Joseph	400	[illegible]
From Jefferson City to Fort Smith	375	[illegible]
From Brownsville, Nebr., to Fort Sedgwick, Colo. (Had to haul poles in wagons 60 to 110 miles, and wire, insulators, etc., had to be so hauled 400 miles.)	475	[illegible]
From Cheyenne, Wyo., to Sante Fe, N. Mex.[a]	475	[illegible]
From St. Joseph to Brownsville	75	[illegible]
From St. Joseph to Kansas City	35	[illegible]
From Booneville, Mo., to Brunswick	80	[illegible]

[a] This line was built when labor and materials were at their highest. The wire, insulators, etc., had to be hauled 600 miles in wagons, and the poles had to be hauled long distances.

The first line and the last two crossed the Missouri River.

One hundred and twenty-five miles of second wire was put up from St. Louis to Jef-

e cost of the Western Union lines per mile of wire was about
bit of frankness for which I am very much obliged to him. In
eneral Stager, the general superintendent of the Western Union
ny, made a return under oath of the value of their property in
the commissioner of telegraphs for that State, in which he placed
rth of their lines at $35 per mile of wire.[15] During the year
June 30, 1895, 2,684 miles of poles and 20,370 miles of wire,
nstituted the American Rapid Telegraph Company, has been
by the Western Union for $550,000 in its stock at par, or $27 a
wire.[16] The actual market value of the stock payment was $22
and the Rapid lines were among the very newest and best the
n Union has ever bought. Let us apply these data to the 190,000
f line and 800,000 miles of wire now claimed by the Western

TABLE II.

	Average cost per mile of wire.	Cost per mile of single line.	Cost per mile of additional wire.	Cost at same rate of the system claimed by the Western Union.
Prescott, Western Union	$62	$84	$40	$40,250,000
Orton's report, Western Union	70	100	40	43,400,000
Green, Western Union	45	.....	.....	36,000,000
Eckert's report, Western Union	.....	75	35	35,600,000
Western Union	.....	75	30	32,500,000
m Duser, United States	.....	75	30	32,500,000
Stebbins, New York	.....	60	30	29,700,000
ager, Western Union	35	.....	.....	28,000,000
Telegraph, purchase, Western Union	22	.....	.....	17,000,000
Eckert's 1894 report, Western Union	21	.....	.....	16,800,000

e I was studying this matter of cost, Judge Walter Clark, of the
Carolina supreme bench, suggested to me the advisability of
the valuation of Western Union property from the commission-
asurers, comptrollers, etc., in the various States and Territories.
up a circular letter, and Mr. Flower had a copy of it sent to the
officer in each State and Territory. Fifteen sent the desired
tion; some others replied to the effect that the facts requested
ot be obtained. The successful reports are very interesting, and
d been possible to get complete returns we should have discov-
ot only the value of Western Union lines per mile, but also the

ty at a cost of $25 a mile. There is some extra expense in running through the
f Eastern cities, but the long hauls in the West probably offset this fully and
e average about the same for the country as a whole. "Before the war a
gle-wire line could be built for $50 to $60 per mile, and additional wires cost
to $30 a mile * * * I have to-day received a circular quoting the best
ed telegraph wire at 9 cents. That is only a trifle higher than it was before
and it will very likely go to a lower figure in a short time, so that telegraph
be constructed as cheaply as before the war." This was written in 1870.
he telegraph wire in ordinary use costs only about $9 a mile; the poles cost
tern Union $1 apiece, (Tenth Census); 25 to mile, $25; insulators, etc., $2;
=$61 a mile of single-wire line.
te Report No. 577, part 2, page 227.
e Report No. 114, page 38.
ed States Statistical Abstract for 1894, page 363, and Western Union Reports,

real number of effective miles the company owns. Here are the results of the quest:

TABLE III.

State.	Number of wires per mile of line.	Valuation per mile of—				Method of valuation required by law.
		Line including all wire, office furniture, instruments, etc.	Poles with first wire.	Wire excess.	Wire average on entire system.	
Michigan	3		$31	$16	$21	True cash value.
Montana	3½		42	10	19	Full cash value.
Maine	6½				35	Value.
Missouri		$43				Their value.
North Carolina	3¾		30½	8½	15	Real value, true value
New Hampshire	3				39	Full and true value.
Nevada		52				True cash value.
Kansas			50			True value in money.
Indiana	5				a71	True cash value, franchise and all.
Iowa	3				21½	
Idaho	3		50	12½	25	Cash value.
South Dakota	2	50			22	True and full value.
Tennessee		40				Cash value.
Vermont	2½				28	
Wyoming	5½		50	15	20	Full value.

a The valuation in Indiana includes the franchise as well as the physical plant. See revised statutes Indiana, sections 8484 and 8485. In Massachusetts the assessment is based on stock values and no attempt is made to estimate the worth of the lines. The same, no doubt, is true in many of the other States that failed to send the data requested.

From these returns it would seem entirely fair to take $40 as the average value per mile of poles with the first wire, and $15 per mile of wire excess. This would make the lines claimed by the Western Union worth about $16,500,000.

The truth is, however, that the claim of 190,000 miles of line and 610,000 miles of wire excess is not based on fact. The Western Union does not possess the system it claims. At the time of the Blair investigation the Western Union claimed 131,000 miles of line, 375,000 miles of wire, and 39,000,000 messages. D. H. Craig went carefully into the subject and proved to the committee that no such plant could be needed for the business reported—75,000 miles of good wire being ample to do the whole work over the territory occupied by the Western Union. He said the claim that 375,000 miles of wire and 131,000 miles of poles were necessary to transact the company's business was a pure fiction, and that—

> The only possible way in which the Western Union can figure its plant at 131,000 miles of poles and 375,000 miles of wire, is to assume that the company now uses all the old rattletrap lines it has bought or leased in its eagerness to wield a monopoly of telegraphing.[17] It is true, beyond dispute, that a very large percentage of the many thousands of miles of posts and wires, leased or bought from opposing companies, were utterly or nearly worthless for practical work when they came into the possession of the Western Union Company, and were bought wholly and solely to be rid of a rival company. Whatever number of miles of line the Western Union has in its plant, it is very certain that not more than 75,000 or 80,000 miles of wire and 25,000 to 30,000 miles of poles can possibly be required to cover all the territory the

[17] Mr. Craig's testimony is confirmed by the letter of G. S. Thompson, a prominent telegraph builder of New York, to the Washburn committee, in which he says: "It must be remembered that the estimate (in its report) of the quantity of lines owned by the Western Union has been predicated upon a computation made by simply adding together all lines that have ever come into its possession. Many of these wires have now ceased to exist, and others that are still standing are not in operation." (*House Report No. 114, page 85.*)

ıpany occupies. Among the extensive telegraph plants absorbed by the Western ion during the past ten years were the Pacific and Atlantic, the Southern Pacific, Atlantic and Pacific, the Franklin, the Continental, the American Union, the tual Union, etc. Their many thousand miles of posts and wires were built par-l to the Western Union lines, but upon dirt roads, and therefore could have been very little use to that company even if they had been well built. It is well ɔwn, however, that every one of the lines except the Mutual Union (and doubt-ı that also), was built expressly to be sold to the Western Union and built in the ıapest way possible. Being intended for annoyance to that company, they ran close as possible to its wires, and therefore were of little practical use to the pur-ıasing company. These seven companies drew from the Western Union not less ın $40,000,000 of its stock, though it could construct a range of lines at a cost of 000,000 that would be far more useful and valuable than all of those speculative es.[18]

These are the words of a very high authority, an organizer of tele-aph companies thoroughly familiar with every detail of the business. is testimony is confirmed by Mr. Thompson, who told the Washburn mmittee that, the Western Union did not really operate more than),000 to 90,000 miles of wire.

The Hon. Gardiner G. Hubbard, a man who knows the telegraph ıainess from beginning to end, told the Bingham committee (p. 13) at the Western Union "has a large number of wires that are not quired. * * * They have probably twice as large a mileage of ires to maintain as is necessary, in consequence of the duplication of ires bought of competing companies."

In 1887 the Baltimore and Ohio system handled about 7½ million essages with 52,000 miles of wire, while for 47½ million messages the 'estern Union claimed to require 524,000 miles.[19] In 1889 Great Britain ıt more messages with 175,000 miles of wire than the Western Union th its supposed 647,000 miles. In 1895 Great Britain handled ,000,000 messages with 35,000 miles of line and 215,000 miles of wire, ıile the Western Union wishes us to think that it needed 190,000 les of line and 800,000 miles of wire to handle 58,000,000 messages. ıese contrasts are interesting in connection with the testimony of the perts given above, but are not conclusive in themselves, because we ı not estimate exactly the difference in the length of circuits, nor allow scisely for the wires leased to newspapers, merchants, brokers, etc. e Western Union claims to lease 50,000 miles in this way. In Eng-ıd also many wires are leased out, but the mileage is not reported.

There is further evidence that the Western Union claims are too ge, when we turn from the question of the number of miles in actual istence to the question of the condition of those existing miles of line d wire. Not only has the Western Union added together the mileage the useless parallels it has absorbed, to make its plant appear two three times as big as its effective working system really is, but it s allowed even its working lines to get considerably out of repair.

Mr. C. F. Varley, a distinguished English electrician employed by ɜ Western Union some years ago to inspect their lines and report on ɔir condition, said: "The insulating power of your lines is, on an erage, but 20 to 25 per cent of the minimum allowed in England in ɔ very worst weather. The insulators, even when new, are poor. ur insulation is horrible in hot weather, and is getting worse. ke in hand those lines which earn most of your money, the Boston d Washington lines for example; reinsulate one half or one-third of em, and I expect you will find them sufficient for your traffic."[20]

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[18] Blair committee, volume 2, page 1277.
[19] Bingham committee, page 76, D. H. Bates's testimony.
[20] House Report No. 114, page 42.

This opinion of Mr. Varley as to the condition of the Western Union lines is concurred in by the electricians of this country, and confirmed by the best of authorities—the operators who work them. If this be the condition of the best wires, what must be the condition of the poorest?[21]

Mr. Thompson said that at least one-third of the wires actually in operation would require immediate renewal if the Government should take possession of them.[22]

On the whole, it appears pretty clear that 80,000 miles of line and 300,000 miles of wire would be more than enough to replace the plant actually operated by the Western Union, including all the lines it leases from other companies, except the ocean cables. For the whole land plant, then, including the lines leased to and by the Western Union, 100,000 miles of poles and 400,000 miles of wire is certainly a liberal estimate. At the rates returned by the States of Table III, the real plant would then be worth $10,000,000. And at the median rates of Table II (75 and 35), the Western Union's own data, the real plant would be worth $21,500,000 if it were new. The first is probably too small, as the full value of property is rarely returned to the State officials, no matter how strongly worded the law may be, and the second is too large because the operative plant is not new nor in first-class condition. It is certainly safe to take off at least one-third for depreciation, which leaves the actual value of the lines not above $14,500,000.[23]

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[21] House Report No. 114, page 42.

[22] Ibid., page 85.

[23] Hon. Charles A. Sumner, of California, a practical telegrapher and an earnest student of this whole subject, said in 1888 that "the lines of the Western Union and Baltimore and Ohio together are not worth $15,000,000. And for $25,000,000 sufficient first-class construction can be had for a postal telegraph reaching every post-office in the United States." (Bingham hearings, Thurber, p. 20.) G. S. Thompson, after telling the Washburn committee that many of the lines bought by the Western Union had ceased to exist though their mileage was preserved in the company's reports, went on to say: "It is also believed that this company, could they dispose of their present lines and build new ones, would devise a system that would much more perfectly meet all requirements, using therein perhaps less than two-thirds of the material now in their existing lines. It is therefore our purpose to urge upon your consideration the propriety of basing all estimates upon the presumption of entirely new lines, built in accordance with the latest scientific improvements, located according to a carefully digested system, believing that such new lines thus constructed, covering an area much more extensive than that now embraced in all existing lines of the Western Union, can be constructed for a sum less than $10,000,000." (House Report No. 114, p. 86.)

Mr. Charles E. Buell, one of the most experienced telegraph line managers in the country, wrote in 1885: "The entire property of the Western Union could be shown to be worth not much, if any, over $10,000,000." (Sumner's speech in the House, February 28, 1885, p. 6.)

Taking the reported mileage without questioning its accuracy, it has been estimated that the Western Union system could be replaced for $25,000,000 to $30,000,000." "The entire Western Union plant can be duplicated for $25,000,000." (I. T. U., 1894, p. 39.) In the same hearing (p. 21), Gardiner G. Hubbard expressed the opinion that "a system substantially competing with the Western Union would cost $20,000,000 to $25,000,000." John Wanamaker, taking the more conservative of the testimony before him, placed the cost of duplication with a new plant at $35,000,000. (Wanamaker's argument, p. 5.)

Mr. Seymour, representing a syndicate of New York capitalists, told the Bingham committee that they estimated the cost of duplicating the Western Union plant at $20,000,000 to $25,000,000, using No. 10 copper wire, which is better and more costly than the iron wire which constitutes the bulk of the system now. (Bingham Report, 1890, Seymour's testimony, p. 8.)

John Campbell, a leader among telegraphers, told the Blair committee (1883) that it was "the general impression of telegraph operators that $30,000,000 is a very high estimate for the Western Union system" (vol. I, p. 121); and the detailed estimates on which Mr. Campbell based his conclusion are higher than the cost shown by the

'or the other elements of the plant we have the testimony of ent Green that the right of way cost the company nothing.[24] It no part of the investment; so far as it is an item at all, it enters e running expenses in the way of a rent paid by service. The values held by the company in recent years are said to amount about $16,000. The company reports 21,360 offices. But more ıree-fourths of its offices are really railroad offices, furnished and d by the railroads.[25] The Washburn committee (House Report l, p. 40) estimated the average cost of instruments, furniture, etc., Instruments are much less costly now than when that report ıde. Colin Fox testified that it cost about $25 to fit up an office new set of instruments. Idaho reports them now as valued at set. North Carolina reports the batteries, instruments, furni- tc., the whole outfit of 286 offices, as worth $7,206, or $30 an Anyone who will examine the little offices in stores, hotels, ill see that $30 to $50 would be ample to cover the contents of f them. In a large city office, perhaps $1,000 may be needed, mes more. If we put the average throughout the country at $100 ce, to be on the safe side, the office investment of the Western will amount to about $500,000. The company claims $4,979,533 tate. As we can not prove the incorrectness of this item we will t, and assume that it is all used as a part of the telegraph plant. ing all the items together, we have about $20,000,000 as the real of the Western Union plant.[26] Subtracting the $15,000,000 of

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ecords of construction cited in the text. Another witness before the same tee, Daniel S. Robeson, of New York, telegraph engineer and contractor, said ld charge $1,000 a mile for an 8-wire line, which is certainly high enough to comfortable profit even for a New Yorker; and yet this same Daniel Robeson t for $30,000,000 he would be willing to undertake to reproduce not merely tern Union system, but the entire telegraphic facilities of the country—the legraph system, Western Union and all, as set forth in the reports of the ies. (Blair committee, vol. 1, p.306.) And this $30,000,000 would include the tor's profit, which was not meant to be small, as we can see by the gentleman's for an 8-wire line between New York and Chicago. One noteworthy circum- bout the testimony of the high-priced contractors is that they refuse to tell e actual cost of construction would be, being unwilling to do more than state sy would charge, which leaves the listener in the dark as to their profit unless ight from other sources.

f the most amusing things in the history of Western Union affairs is the fact presidents have no idea what the plant did cost, so that when asked about it ve to compute the value, a process which produced results varying from 00 to $130,000,000 during the same investigation and from the same president. Report No. 114, p. 37). President Green a little later stated in a public address Western Union could not be duplicated for $150,000,000. What superb self- t must have been required to keep the stock down to $95,000,000!

Mr. Sumner introduced his bill for a postal telegraph in 1885, stating that all t-offices in the country could be connected for $25,000,000, the report was in- ıly circulated that the Western Union system alone was worth $120,000,000. e inquiry began before the Senate committee the claim dropped to $100,000,000. he statements came to be made in form for record by the reporters the esti- l to $80,000,000. Then an agent of the Western Union went over to the House tee and said the system was worth $70,000,000—a spontaneous descent from ,000 to $70,000,000; and finally the Senate committee reported that the West- on lines were not worth over $30,220,960 (speech of Hon. Charles A. Sumner Iouse, February 28, 1885, pp. 5–7).

ar right of way did not cost us any money cash down; we pay for it by serv- he railroad companies." (Dr. Norvin Green's testimony, Senate Report No. t 2, p. 227.)

gham committee, hearing of Mr. Thurber, testimony of Mr. Wiman, a direc- e Western Union, page 22. See, to same effect, testimony of President Green, mmittee, vol. 1, page 881.

this includes all the land lines of which the Western Union is the lessee, and re *not a part of the property* of the company. The New York Mutual lines

bonds, we have $5,000,000 left as the basis of $95,000,000 of stock—18 water to 1 of solid present value not covered by the bond mortgage.

The bondholders own $15,000,000 of the plant, and $5,000,000 is all the physical value that is left for the stockholders. After paying 6 per cent on the bonds the public should not be asked to pay the stockholders more than 6 per cent on $5,000,000, for that is substantially what they own of the plant above the mortgage, and they have no moral right to ask the public to pay interest on the franchise which was created by the public and is kept alive by its patronage. The expenses of the business, including depreciation, plus a fair interest on the value of their investment, is all they have a right to ask. The public contributed the franchise on which a value has been placed of about $90,000,000 out of a total $110,000,000, so that on the principles of partnership the public ought to get nine-elevenths of the profits.

This brings us to the fifth great evil of our telegraphic system—the unjust profits of the owners. Justice gives fair remuneration to labor and a reasonable profit to the capital actually entering as a factor into present production. The ordinary corporation, however, cares nothing for justice.[27] It takes all it can get. For 1895 the Western Union reports $6,141,389 profit, and $1,578,584 paid in rentals for leased lines; part of it for ocean lines, leaving about $7,000,000 of profit for the land plant. Interest on bonds was $893,821, wherefore more than $6,000,000 remain as profit on less than $5,000,000 of property—the portion of the plant not covered by the bonds. One hundred and twenty per cent is a pretty good profit, but it is nothing for the Western Union. In 1874 the dividends amounted to 414 per cent—the investors got their money back four times in one year.[28] During the war, when patriotic citizens were giving their lives and their money for the service of the public, the Western Union was squeezing the public with

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are put down at 60,000 miles of wire, the Northwestern Telegraph Company, and the Gold and Stock Telegraph Company, etc., are supposed to bring the wire leased to the Western Union up to about 100,000 miles. A considerable part of the stock of these companies is owned by the Western Union, but the portion of the property still outside of Western Union ownership is quite large, as is shown by the fact that the company still pays over three-fourths of a million a year in rentals for the land lines that are leased to it. If the value of these lines still outside of Western Union ownership were taken into account, it would be seen that the basis of Western Union stock is even smaller than appears in the text. It is not possible, however, to ascertain the said value with any accuracy, because we do not know how much of these particular lines remain standing nor their condition; and the rental is no guide, for a big rent on property owned by Western Union directors and leased to the Western Union is simply one way of hiding profits.

[27] Now and then there is a corporation with some lingering rudimentary ideas of justice; for example, the Chicago and Milwaukee telegraph company referred to in Part II of this discussion, which ran two years on a 10-cent rate, paying back 90 per cent of their investment to the stockholders, then made a 5-cent rate or half a cent a word, and after deducting expenses and 7 per cent on the capitalization, gave back the remainder of the earnings to the patrons of the company—said remainder amounting sometimes to 40 per cent of the gross receipts, and running continuously from 25 to 40 per cent of the entire business. It was wonderful for a corporation to give back to the patrons all above expenses and 7 per cent on the capitalization, and it would have approached complete cooperative justice if the capitalization had been true. But it was left at the original cost during the first two years of the surplus profit distribution, and afterwards it was doubled, although the original cost had been almost wholly repaid to the stockholders before the profit sharing began. Let us be thankful, however, for the record of a business corporation capable of manifesting so much of the mutualistic spirit, and hope that others may imitate and improve upon it. (For this story of the Milwaukee company see Bingham hearings, *statement of* F. B. Thurber, p. 25.)

[28] *Statement of* Hon. John Davis to the Committee on Post-Offices and Post-Roads, 1894; *I. T. U.* hearings, page 59; see also page 4, and Wenzinger's argument, page 5.

all its power and paying 100 per cent dividends a year,[29] not merely on actual investment but on the total stock, water and all. Since 1866 the receipts have been $440,000,000, profits reported as such $137,000,000, which rises to $160,000,000 with the profits put down under the head of rentals, and to more than $200,000,000 with the profits expended in buying rival lines that wouldn't take Western Union stock; at least President Green tells us that the company has spent more than $61,000,000 in cash to buy opposition lines,[30] and as the balance sheets show that this $61,000,000 did not come out of reported profits it must have come out of unreported profits except so far as provided for by the bonds. There are other additions to be made on account of new construction put down to operating expenses.[31] It is impossible to ascertain precisely the sum total of Western Union profits; even if all the items were reported it would not do to be too sure they were correctly stated, for corporation bookkeeping is a very flexible affair. There seems, however, to be good reason to believe that at least half the receipts have been profit. And these millions have in large part been received by men who put almost nothing into the plant. It is probable that the stockholders of the Western Union proper never paid in $500,000 from first to last.[32] And John Wanamaker says that "an investment of $1,000 in 1858 in Western Union stock would have received up to the present time stock dividends of more than $50,000 and cash dividends equal to $100,000, or 300 per cent of dividends a year."[33] Think of it, getting your money back 100 times in cash, and 50 times more in good interest-paying property!

It is probable that the total amount overpaid by stockholders into the treasuries of all the companies composing the Western Union system does not exceed $16,000,000.[34] Of course there has been more

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[29] Wanamaker's argument, page 5.

[30] Bingham committee, page 65.

[31] "We have built from 10,000 to 20,000 miles a year of new line out of our earnings all the time." (Senate Report No. 577, part 2, p. 218.) Yes, out of the earnings, not out of the profits. The reports say that the new construction has been provided for out of the surplus, but when you turn to the balance sheet you find that it is not true; the construction is included in expenses, and the surplus reported each year goes undiminished to the next.

[32] Senate Report No. 577, part 2, page 58. And see Bingham committee, testimony of Gardiner G. Hubbard, page 5, where Mr. Hubbard says: "In 1858 the capital of the Western Union was $385,000. So far as my knowledge goes, and I believe I am conversant with the affairs of the Western Union" (the witness said he had every report the Western Union had ever issued, and he had evidently studied them carefully)—"so far as my knowledge goes, not one dollar of cash has been paid into the treasury of the company since that time."

[33] Wanamaker argument, page 5. Mr. Charles M. Stebbins, speaking of this subject, says: "At this time (about 1858) I think their expenditures had been about $250,000 to $300,000, but they soon after declared a dividend of more than enough to pay off their original investment in cash and quadrupled their stock. After that, I think, all their investments were paid out of their earnings after paying dividends, averaging 8 per cent. They bought new lines, sometimes paying cash, but generally giving their own stock, making new issues as needed. * * * They bought many lines very cheaply by first ruining the value of the line by competition or other means. They got many lines for nothing by inducing railroad companies to pay all the expenses of construction and maintenance while the telegraph company received the benefits. They built other lines with the aid of subscriptions to be paid back in telegraphing at high rates after the completion of the line. They absorbed many lines by giving their own stock—stock which, as I have said, has had 1½ parts of water added to it." (House Report No. 114, p. 82.)

[34] Referring to this subject Gardiner Hubbard said to the Hill committee: "I think there has been of actual cash put in either by the Western Union or by other companies about $5,000,000." (Senate Report No. 577, part 2, p. 58.) The highest estimate I have seen of the total amount paid in by all stockholders is that given in the report of the National Board of Trade for 1882, which says: "It is estimated by good judges that there has never been paid in by stockholders $18,000,000 since the

money than that put into the plant, but it has come from the profits and the bonds. The system has been built up in four ways: First and least, with money paid in by the original stockholders; second, with capital put into competing companies which have failed and been absorbed by the Western Union; third, with profits, after payment of dividends, which have been used to construct new lines and extend the system; and fourth, with money borrowed on mortgage of the plant.[35] A reasonable merchant, manufacturer, or landlord is satisfied to pay for his property himself, and get 10 per cent profit on his capital, out of which profit or other capital of his own he expects to make any improvements his business may require. The Western Union man, however, expects the public to pay for his plant and all improvements upon it, and give him 300 per cent a year besides. How long are you going to stand that sort of business, my brothers? And even this is not quite all. The Western Union man likes to get a bonus out of the Government when he can without awakening the people, and he has sometimes succeeded in getting a bonus that all by itself would pay five times the cost of the line for which it was given.[36]

IV.

The sixth count in the indictment of the present telegraphic system in America is the ill treatment of employees and a general abuse of the employing power—child labor; overworked operators; long hours and small pay for those who do most of the work, short hours and big pay for those who manage and scheme; less wages to women than to men for the same work; favoritism and unjust distinctions between men in the same service; a settled policy of reducing wages and increasing work; denial of the right of petition, the right of organization, and the right to consideration because of long and faithful service; fraud, oppression, merciless discharge, blacklisting, boycotting, breaking agreements, treating men as commodities to be bought at the lowest market price and thrown away like a sucked orange as soon as the company has squeezed the profit out of their lives—such are the items or some of the items under this vital count.

The employment of thousands of little boys 12 to 16 years old is a very serious wrong. These children ought to be in school, not in the street. One of the best things about public business is that it does not impose the burdens of toil upon childhood. In the post-office the carriers are men, not boys. There is no better measure of the difference in the spirit of national enterprise, and the spirit of a great private corporation, than is to be found in the contrast between the fine looking men who act as messengers for Uncle Sam eight hours a day on salaries of $600, $800, and $1,000 a year, and the little mind-starved, opportunity-cheated boys that act as messengers for the telegraph companies ten to sixteen hours a day on salaries of $2 or $3 a week.

The work of a telegraph operator is very exhausting.[1] He suffers

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beginning of the Western Union system, and that its present property represents simply water and the amounts extorted from the public to extend the lines, besides paying dividends." (N. B. T., p. 11.)

[35] I. T. U. hearings, page 16.

[36] House Report No. 114, page 82; Bingham committee, Hubbard, page 10; Senate Report No. 577, pages 4, 5, etc.; see notes 2 and 3 above. They also got a subsidy from the State of California. They gave some service in return for the subsidies, but of insignificant value; even if charged up at the high rate demanded of private patrons the said service would not amount to a quarter of the subsidies received (Bingham committee supra.)

[1] Testimony of operators, Blair committee of the United States Senate, volume 1, pages 116, 125, 187, 193.

rom close confinement, cramped position, strenuous attention, and rapid work of brain and arm. President Orton of the Western Union testified that no operator should perform more than six hours' work per day.[2] Yet as a matter of fact the majority of operators are on duty from twelve to thirteen hours,[3] and the day is often much longer than that. Victor Rosewater, himself an operator for many years, and for several years manager of the Western Union Telegraph Company at Omaha, told the Bingham committee in 1890 that "at railroad stations sixteen hours a day is a short day's work. I have worked eighteen hours a day."[4] Hon. John Davis, after telling the Henderson committee in 1894 about the overworking of railway engineers,[5] continued his testimony as follows:

> Telegraph operators, who, as you know, control the running of trains, are also overworked, and they are not competent for duty after a great loss of sleep. One train dispatcher said that he sometimes had to work twenty hours a day, but sometimes found himself obliged to take some sleep in the meantime, though he made it as short as he dared.[6]

Worst of all, the aim of the companies is not to lighten the burdens of their workers but to increase them. The victory of the Western Union in the great strike of 1883 gave the managers an opportunity for rearrangement which they improved to such purpose that Dr. Green, the president, is reported as saying:

> The several hundreds of thousands of dollars which have been lost in the strike, I regard as the best financial investment made by the company. Hereafter General Eckert tells me that he will get one-third more work out of a man for a day's service, and the economy of such a step will retrieve the loss in less than six months.[7]

One-third more work in a day, though the men were already suffering from overwork, and paralysis and consumption, early disability and death were common among them.[8] Even Dr. Green admitted that

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[2] Testimony of operators, Blair committee of the United States Senate, volume 1, pages 116, 125, 187, 193.

[3] Ibid., 119, 156. In the large city offices nine or ten hours constitute a day's work, but elsewhere the day is from twelve hours up, and even in the city operators are not seldom obliged to work thirteen and fourteen hours a day (p. 150).

[4] Bingham report, Rosewater, page 6.

[5] I. T. U. hearings, page 59. The testimony about the engineers is so pertinent to the present subject of corporation ill treatment of employees, that it seems well to give it in condensed form. Mr. Davis said that in many cases "Railroad engineers are worked forty-eight hours at a time without sleep;" also that "Engineers have frequently told me that they have put tobacco in their eyes to keep themselves awake," and are sometimes obliged to leave the engine in charge of the fireman to get an hour's sleep, although it is dangerous to trust the fireman because his eyes are apt to be dazzled by the fire he has been replenishing at night, so that he can not see well ahead for half an hour afterwards, and sometimes for several hours afterwards.

[6] Ibid.

[7] Wanamaker's argument, etc., page 221.

[8] Blair, Senate committee, volume 1, page 193, operator's paralysis; page 125, consumption. "The operators are frequently carried off by consumption, generally caused by close confinement and the positions they have to take while at their work. Owing to the peculiar nature of the business, drawing the attention of the mind to the instrument, and the rapid rate at which the sounds have to be distinguished and transcribed on paper, and owing also to the position a man must assume, sitting steadily and writing all day, the ordinary and proper exercise of the respiratory organs is prevented; and as a matter of fact you will find that when a man is what we call being 'rushed' he hardly breathes at all, respiration almost ceases." (Testimony of J. S. McClelland.)

Q. What is the character of their work [operators] in respect to its exactions on the physical frame?—A. It is very exhausting work. There are very few old men in the telegraph business.

Q. Do you mean that the telegrapher dies young?—A. Yes, sir; either he dies young, or he is compelled to quit the business in order to save his health. (Testimony of John Campbell, master workman of Brotherhood of Telegraphers. Blair, vol. 1, p. 116.)

"there are some instances where the operators work very hard,"[9] and the operators themselves declared that "the Western Union has always been short of help, and it generally makes one man do the work of a man and a half."[10] And this is the way the Western Union succeeds in sending more messages per employee than is the case in England or Germany.

The systematic overworking of employees was one cause of the great strike of 1883, in which the telegraphers demanded that eight hours should constitute a day's work and seven hours a night's work—very moderate demands in the light of the sworn testimony of President Orton and the uncontroverted statements of the men themselves—but instead of less work they got more—"one-third more work out of a man for a day's service," Dr. Green said.

The dangers of this cruel system, not only to the operator, but to the public, are well illustrated by the case of George Welsh, a young man of 17 years, who was telegraph operator at Plainfield, Conn., in 1892. On the 9th of July, after he had been on duty all day, from 6 a. m. till 5 p. m., he received a train order to hold a passenger train, and immediately after receiving the order, he was "called up" by the chief operator at another station, who sent him a message ordering him to report at a neighboring town as soon as he was off duty at Plainfield, remain there on duty all night, and then to report back at Plainfield in the morning and remain there all day. The result was that the boy mishandled the signals and a collision occurred which caused the death of three persons.[11]

While the Western Union is liberal in bestowing hours and burdens upon its employees, it is very illiberal in the matter of wages. A few telegraph operators are well paid, but "nine-tenths of the operators employed by the Western Union are paid from $15 to $40 a month, and many educated, intelligent men, thorough in their profession, are being paid $50 a month."[12] President Green testified that the average salary of operators was $71.56 for men and $36.75 for women, or a total average of $62 to $65.[13] But his estimates were made up from the New York offices alone (as clearly appears in the tables he gave the Bingham committee), and his figures were reduced to the absurd on cross-examination, as we have already seen.[14] The operators themselves testified that the average pay of operators, even in the main office of the company, was only $57;[15] that many operators employed in commercial telegraphing receive only $30, $35, $40, or $50 a month;[16] that for commercial operators, including the whole range, well-paid men and all, the average pay would not exceed $54, and for railroad operators $39;[17] that women get 35 to 40 per cent less than men for the same work;[18] that the company pursued a systematic policy of reducing wages by filling positions vacated by death, resignation, transfer, or discharge with new men at salaries $5 or $10 below the pay of the former occupants;[19] that the reduction had amounted to 40 per cent from

[9] Blair, volume 1, page 892.
[10] Ibid, page 230.
[11] Blair Senate committee, volume 1, page 173.
[12] Wanamaker's argument, page 141.
[13] Bingham committee, page 59; Blair committee, volume 1, page 908.
[14] Note 5 to Part II above.
[15] Testimony of John B. Taltawall, operator and editor of the Telegrapher's Advocate. Blair committee, volume 1, page 171.
[16] Blair committee, volume 1, page 103.
[17] *Ibid.*, pages 103, 192.
[18] *Ibid.*, page 116.
[19] *Ibid.*, pages 103, 125, 225

1870 to 1883;[30] that it had gone so far as to reduce the salaries of first-class operators in Chicago to $50 a month;[31] and that all the while the hours of labor were increasing and the profits of the company growing larger. Senator Blair, the chairman of the Committee on Education and Labor, summed up the evidence in these words:

> The operators who came here and testified almost universally stated that for a long series of years there had been a constant reduction of salaries going on, and this while their efficiency was increasing and their hours of labor in many instances were also increasing, and more money was being made by the company.[32]

Such was the situation in 1883, when the men struck for 15 per cent increase of pay, no salary less than $50, the same pay for women as for men, and eight hours for a day's work—moderate demands, very, but the company did not accede to them. It would cost a million dollars or more, the managers said, and the company could not afford it. Poor company! making only 120 to 150 per cent on its investment, it could not afford to yield the men one sixth of the profits the men produced. When you have read the following list of poverty-stricken individuals who constituted the board of directors of the Western Union and its chief owners you will see why the company could not afford to pay fair wages to its men:

Jay Gould.	William W. Astor.	C. P. Huntington.
Russell Sage.	J. P. Morgan.	John T. Terry.
Fred L. Ames.	P. R. Pyne.	Cyrus W. Field.
Sidney Dillon.	Chauncey M. Depew.	John Vanhorne.
Thomas T. Eckert.	George J. Gould.	A. B. Cornell.
Dr. Norvin Green.	Edwin Gould.	Robert C. Clowry.
Samuel Sloan.	Charles Lanier.	Henry Weaver.
George B. Roberts.	Austin Corbin.	William D. Bishop.
Sidney Shepard.	John G. Moore.	James W. Clendenin.
Erastus Wiman.	Henry M. Flagler.	John Hay.

Mr. Thurber used this list in 1890 to answer the question why the public can not have a postal telegraph, and it is an equally conclusive answer to the question why the men could not have moderate hours and reasonable wages. Every name represents some great interest—railway presidents, bankers, stockbrokers, millionaires by the ton; and you know a dollar is of much more importance to a millionaire than it is to a workingman. Gould, Sage, Astor, or any one of several others in the list could have given the men all they asked out of his own private income and never missed it if he had been of the ordinary mold of man, but being a millionaire the chances are it would have broken his heart. Some of the directors are fair-minded men, perhaps, but the ruling spirits are wholly unfit to be trusted as employers with the mastery and management of human beings. More than two-thirds of them (all but the last nine) are on the Tribune's millionaire lists for the cities of New York, Boston, and Philadelphia, a number of them having fortunes of ten, twenty, thirty, fifty, even a hundred millions, and probably there are very few if any in the entire board so poor as to have but a single million; yet these men, or the majority at least, were willing to grow richer on the labor of men and women and boys and girls, receiving in many cases $8, $12, $20, $40 a month, and working often twelve to sixteen or even eighteen hours a day. A thousand dollars, or the fair value of an average year of labor, put into Western Union stock in 1858 has brought its owner $3,000 a year ever since, or $114,000, and the investment is as good to-day as ever; but an operator

[30] Blair committee, volume 1, pages 103, 271.
[31] *Ibid.*, page 226.
[32] *Ibid.*, page 892.

who puts in a year of work on the wires gets on an average $500 for it and that is the end of it; if he wants any more he must work some more. The contrast between the results of a year's work put into capital by the employer and a year's work done by the employee is terrific. If the board were of a generous temper toward the people who earn their income for them or even the subjects of a just and righteous conscience, the dividends of the Western Union torn from the labor of overworked and underpaid employees would have burned a hole in their pockets and dropped back among the workers.

On the profit-sharing principle of the Le Claire shops the men should have had $3,500,000 of the $7,000,000 profit, and on the full cooperative or partnership principle the workers should have received over $5,000,000 of the $7,000,000; but the company does not know anything about the principles of partnership or profit sharing; it knows only of profit getting.

After the strike—and the committee had listened to months of testimony about it—Senator Blair said to President Green:

> I have the impression very strongly that you could afford to give your operators more money, and now that you have got your own way about it, I wish you would just come up and give those boys more money.[23]

In 1890, however, the evidence was that the average pay of telegraph operators was $40 to $45 a month,[24] that girls were employed in some instances as low as $12 to $14 a month,[25] and quite a number were paid no more than $20 to $35,[26] while the president of the company drew a salary estimated at $25,000 to $50,000.[27]

As a rule operators do not receive enough to enable them to marry[28] or to lay up anything for a rainy day[29]—they have little need to provide for old age if they stay in the business.

If the men apply for increase of compensation "the testimony is that universally, without a single exception, those applications (whether made by one individual or bodies of individuals) have been ignored."[30]

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[23] Blair commission, volume 1, page 891.

[24] Bingham commission, page 30, testimony of A. B. Chandler, president of the Postal Telegraph Company, and of D. H. Bates, formerly acting vice-president and assistant general manager of the Western Union, manager of the Baltimore and Ohio Telegraph Company, etc.

[25] Bingham commission, pages 30, 85; statements of Chairman Bingham and of Mr. Beaumont, citing reports of the Labor Bureau.

[26] Bingham commission, page 30, statement of Mr. A. B. Chandler.

[27] On page 44, Bingham report, Mr. Beaumont spoke of "the $50,000 salary of the president of the Western Union." Mr. Crain: "Is that his salary?" Mr. Beaumont: "There are some things a man knows that he can not swear to. This is one of those cases." On page 56 Mr. Anderson is reported as saying, "The salary of the Postmaster-General is $8,000 a year, while it is generally known that the salary of the president of the Western Union is several times greater." To which President Green replied, "What matters $50,000 for executive salaries on 54,000,000 of messages?" Slight matter—only a matter of justice between man and man—insignificant indeed to the Western Union.

[28] Blair commission, volume 1, page 144. Those who do get married generally have to get something outside the regular work in order to obtain a comfortable living for their families (pages 150, 194).

[29] Ibid., page 152. Not one in a hundred accumulates anything. See also page 192, as follows:

Q. Excluding from the question men whose failure to save can be attributed to bad habits, I want to know what chance there is for a reasonably prudent and economical man to save a little money in the business of a telegraph operator?—A. Well, there might be some chance for a man to do that if he cared to work fifteen hours a day—that is, for a single man, but if he was a married man, or had a father or a mother or a sister or some other person dependent on him, it would be simply impossible for him to lay up anything without working extra hours.

[30] Ibid., page 892, the words of the chairman, Senator Blair.

The only notice the Western Union takes of petitions is to "spot" the leaders, discharge them, and blacklist them to prevent their obtaining employment elsewhere.

Anything in the shape of getting up petitions for increase of pay has resulted disastrously to the ringleaders. They have either been dismissed from the service or discriminated against in many ways. Their names are placed on the black list and managers all over the country are notified of it. When they apply for situations the managers tell them that they are on the black list.[31]

A company that denies the right of petition, denies, of course, with still greater emphasis the right of organization. It has repeatedly discharged and blacklisted men for joining the Brotherhood of Telegraphers and for activity in organizing their fellow workers.[32] This is the continuous policy of the company. It acted in this way long before the great strike of 1883. Nevertheless the men succeeded in organizing in secret, and finally sent a representative committee to confer with the officers of the company about the grievances of the men. The insulting treatment accorded this committee and the utter refusal to recognize any right of combination on the part of the men, was the main immediate cause of the strike.[33] When the strike was over the company refused to take the men back again except upon condition of signing an agreement not to belong to any organization that claimed to control their services or salaries as against the company,[34] which of course would uproot the brotherhood or reduce it to impotence if the men regarded their contracts—which, however, they are not in the habit of doing in such cases. They sign an agreement not to belong to a trade union and the next day renew their allegiance to their fellow workmen. Thus does corporate oppression beget faithlessness in employees, and it is hard to blame the men for ignoring the outrageous compact to forfeit their freedom and manhood which they are compelled by their necessities to sign. You can not make a workingman see that it is all wrong for two or more telegraph operators to combine to secure fair pay and reasonable hours and yet perfectly right for two or more telegraph companies to combine to squeeze their employees and fleece the public—it takes a corporation official or a laissez-faire philosopher to see that.

The company does not hesitate to break its faith with employees if it suits its convenience, as in the case of the English operators who came to introduce the Wheatstone system on some of the Western Union lines, and were subjected to great annoyance and loss through the broken promises of the Western Union officials.[35]

It is part of the policy of the company to prevent its men from securing employment in other places at better pay. Sometimes a man has traveled a long distance on the promise of $10 or $20 increase of salary, only to find at his journey's end that Western Union influence had preceded him and shattered the promise.[36]

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[31] Blair commission, volume 1, pages 113-115.

[32] Blair commission, volume 1, pages 115, 180. There is no doubt about the cause of discharge, for it was distinctly avowed by the officers of the company to be as stated in the text, and no other cause was named. That was the sole cause, and in some instances the men were informed in plain English that they would be blacklisted. In a number of instances the witnesses make their testimony specific by giving the names of men discharged and blacklisted for connection with the brotherhood.

[33] Blair committee, volume 1, page 122.

[34] President Green's testimony (Blair, vol. 1, p. 896-897). After the great strike of 1870 the company took back some of the strikers on condition of their taking what was called the "iron-clad oath"—an oath to renounce their union and never again connect themselves with any similar organization. (Blair committee, vol. 1, pp. 153, 199.)

[35] *Blair, volume 1, pages 157, 158.*

[36] *Ibid., page 227.*

The meanness of the company is at times astonishing even to a student of corporation history. The Stager episode is an example. During the war General Stager was general superintendent of the Western Union and commander in chief of the military lines of the United States at the same time. Well, the salary of Anson Stager, as colonel and assistant quartermaster and chief of the United States military telegraph corps, was turned over to the Western Union, and he never got a cent of his salary as an army officer.[37]

There is very little chance of working up to a position of moderate work and reasonable income. Length of service is not taken into account.

I asked my manager if length of service was taken into consideration in fixing a man's pay. He said: "No; that that had no bearing on the question whatever, because there was always a new element growing up that could be engaged probably at less rates of pay than the old operators were getting" (Blair, vol. 1, p. 134); and again on page 125, where a manager was asked, "What encouragement there was for a man to remain steady and reliable and faithful to his duties," the answer was: "None whatever. If you get tired of this position we can fill it with another man at lower pay."

Favoritism and greed appear to be the factors that fix wages. The manager of another company testified that he had had daily applications from first-class operators in the Western Union who were working by the side of others no better in any way and doing the same work, and who nevertheless received $10 to $15 a month less than the last-named operators for no discoverable reason.[38]

Favoritism seems to be one of the rules of the office. We know as a fact that sometimes the men who get the low salaries are capable of doing better work than those who get the large salaries.[39] Another witness said: "I saw that I was not receiving the wages due me in the position that I filled, and that on account of the drunkenness and imbecility of the man who was my superior I had his duties to perform as well as my own, and so, as there was no probability of my ever getting any more wages, I left the company on short notice. I have been able to earn a living with opposition companies, but every absorption that has been made by the Western Union Company has resulted in a decrease of wages." (Blair, 228.) And again (p. 231): "In the employ of the Western Union there is no hope whatever of promotion; that is, on a man's merits."[40]

No wonder John Wanamaker found that "one-third of all the telegraph operators are continually preparing themselves for other professions, and that the other two-thirds are continually thinking of doing so."[41] No wonder, either, that thoughtful operators universally favor national ownership of the telegraph.[42] The contrast of the telegraph service with the national postal service is indeed a striking one.

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[37] Bingham committee, testimony of Rosewater, an intimate friend of the General.

[38] Blair, volume 1, page 231.

[39] Blair, volume 1, page 127, testimony J. S. McClelland.

[40] Testimony of A. H. Seymour, manager of the Mutual Union, and formerly with the Western Union.

[41] Wanamaker's arguments, page 11; see also Blair, volume 1, page 227.

[42] Blair, volume 2, page 410, testimony of R. J. Hinton: "I have never found a working operator anywhere who has not been in favor (if he has thought at all of the question) of a Government service instead of a private service."

	Telegraph operators.	Postal carriers and railway mail clerks.
ge pay per month	From $40 to $50	From $75 to $84.
ge hours	From 9 to 16	8.
tion	For merit, rare	For merit the rule.
of service	Not recognized as giving any claims to increase of pay, or continuance in employ.	Clearly recognized as giving a valid title to increase of pay, retention, and preferment.
	Precarious—dependent on individual whim and arbitrary power of an irresponsible superior.	"Freedom from removal except for inefficiency, crime, or misconduct."
of petition, organization,	Denied	Accorded.

daily train run of a railway postal clerk is four to six hours. (Postmaster-General's Report. 523 et seq.) But the clerk is obliged to devote some further time to making reports, checkrds, preparing supplies for the following trip, etc. In some cases the increase of correspond, s thrown an undue burden on some of the clerks, and then we find the Postmaster-General all in his power to lighten their labors and increase their pay (Reports, 1892, pp. 501, 511–512, 94, pp. 391, 392)—a line of conduct diametrically opposite to that pursued by Western Union ers. The facts as to wages of carriers and clerks are taken from the Postmaster-General's , 1892, page 515, and 1894, page 407. A carrier receives $600 the first year, $800 the second year, ,000 the third. Between four and five thousand of the seven thousand railway clerks receive to $1,400 each, and fifteen hundred more receive $900 each. The contrast with the telegraph s still more pronounced when we remember that the bottom round for a carrier or railway clerk lar employment is $50 a month, while the telegraph bottom is not reached till you get to $12, r still if anybody could be found to work for less. The Post-Office does not seek to buy labor ion, but aims to pay as much as it reasonably can, regardless of the price of labor at forced sale markets of competition. The Western Union, on the contrary, aims to pay the least possible, the forced sale its standard, and takes a hand itself in depressing the rate by systematic and ent reduction.

tement of Postmaster General John Wanamaker, 1892 report, page 501, not merely as the aim, the actual condition of the Railway Mail Service, a condition which had produced great improve n the service. Postmaster-General Bissell, 1894 report, page 395, says: "The civil-service laws gulations as applied to the Railway Mail Service accomplish all the most sanguine expected," es on to speak in the highest terms of the fine quality of appointments, the high efficiency, the sence of employment, and the promotion for merit, secured under the civil-service rules.

y be said that if the clerks in the fourth-class post-offices had been chosen for comparison the st as to tenure, hours, wages, etc., would not have been so strong in favor of public employ- The truth is, however, that the clerks in the fourth-class post-offices are not public employees. re private employees doing public work. Uncle Sam lets out the fourth-class offices on con nd the postmasters hire their own help. The fourth-class offices are neither classified under the rvice nor nationalized. They are simply bits of private enterprise banded together to do a the nation's work under contract, and the clerks are no more public employees than the brake- d conductors on the railroads that carry the mail under contract with the nation. The post- as not yet applied its own principles to the whole of its own service. But it is moving in that n and it is better to have good principles not fully carried out, than bad principles thoroughly out—better to aim at heaven and take some years to get there than to aim at h—l and get ght away.

e contrast with the telegraph service abroad is scarcely less marked the contrast with the classified postal service here. In Great in appointments are made throughout the postal service by comive examination, promotion is by merit, length of service increases permanence of employment is assured during good behavior and ency, and provision is made in case of sickness, disability, and old After ten years service the employee is entitled to a pension of ixth of the salary and emoluments he was receiving; after twenty the pension is one-third; after thirty years, one-half; and after years, two-thirds of the salary.[44] The hours of labor are eight

air committee, volumes 1, page 167. After three years' service an employee es half pay during temporary sickness.

eventh Report of United States Civil Service Commission, 1895, pages 328–344. nada the pensions are larger still—one-fiftieth for each year of service instead -sixtieth as in England. For chief clerks the minimum salary is $1,800, which eased annually by $50 up to $2,400. For second-class clerks the minimum is , increasing annually by $50 to $1,400, and for third-class clerks the minimum , increasing annually by $50 up to $1,000. Women are employed in Canada on me terms and conditions as men, but in England and most of the colonies their slightly less, being four-fifths to two-thirds of the pay of men in the same of service.

per day and seven per night for six days in the week, all Sunday work being counted overtime. The salary of a first-class operator is $950 a year, or about $80 a month.[45] The most significant fact of all is the contrast between the aims of the telegraph management here and in England. Here the policy is reduction of wages as the business grows so that the proportion of income that goes to labor is continually shrinking; there the policy is to raise the wage level, so that an ever-increasing proportion of the income shall go to labor. In 1870, only 39 per cent of the telegraph revenue went to labor; in 1880, 44 per cent; in 1885, 52½ per cent; in 1890, 58½ per cent; in 1895, 72 per cent. The following table, taken from Mr. Morley's returns to the House of Commons, will show in greater detail the recent results of this admirable policy of the British postal management:

Percentage of telegraph salaries to telegraph revenue.

1870	39.13	1892	64.2[illegible]
1880	44.02	1893	67.9[illegible]
1885	52.64	1894	69.9[illegible]
1890	58.47	1895	72.1[illegible]
1891	61.30		

During this period the revenue has risen from 4,000,000 to 13,000,000 a year, so that labor receives nearly six times as much as in 1870. The efficiency of employees—the amount of business per worker—has of late years increased in a marked degree, and since 1885 there has been no change of tariff, so that the increased percentage of revenue going to labor means a very decided addition to individual salaries.[46]

In France, as we have seen,[47] the average wage of telegraph employees has been for a long time above the average here, even on the Western Union's own data. The French civil service is spoken of in the highest terms. It secures "perpetuity of tenure," "guarantees a constantly improving livelihood, and, in case of accident, provision for the families of employees," pensions as in England, and promotion for merit.[48] The great Republic shows the breadth and sincerity of her belief in liberty and equality by paying women in the public service the same wages as men for the same class of work.[49]

In respect to the contrast between our telegraph system and that of Germany, under this head of the interests of employees, I can not do better than to quote the pregnant words of Professor Ely, who has studied the German system in its home:

> Experienced and tried men, with comparatively short hours, are employed in Germany, while in the telegraph offices of this country one finds very young lads, and they are frequently overworked. The fact that so few mature men are found among them shows that they have no secure tenure of office and no permanent employment.

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[45] English Postmaster-General's Report, 1895, pages 7, 11. The English operators who testified before the Blair committee said that a first-class operator received less pay in England than in America, but considering rents and prices as well as wages the English operator was better off than his American brother, financially as well as every other way. (Blair, vol. 1, pp. 165, 166.) The salaries of operators in England have risen since the years referred to by these witnesses.

[46] As a rule the salaries of telegraphers in England have been raised $150 to $200 each since 1881, and the hours have been shortened one-seventh (Forty-first Report of the English Postmaster-General, 1895, pp. 6, 7, 11). This is fine, but the English public service is open to criticism in respect to its failure to recognize the full equality of women and its employment of boys from 15 to 17 years of age.

[47] Notes 5 to 8, inclusive, Part II above.

[48] Eleventh Report of the United States Civil Service Commission, pages 354–358. Fraud or corruption of any kind is almost unknown in the public service (p. 355).

[49] Ibid., page 358.

One young generation of telegraph operators gives way to another. They are employed frequently in dark, dingy, and ill-kept rooms. The contrast with the class of operators employed in a country like Germany and the neat and attractive offices found in that country is painful, and it is really a disgrace to our own country.[50]

The italics are mine. I underlined that sentence because it touches a truth of tremendous import. "One young generation of telegraph operators gives way to another." Do you know why? Do you understand the meaning of that fact? Think back over the evidence collected in this article and you will see what it means. It means that the telegraph system in America is a great press in which the youth and energy and life of thousands of men and women are coined into gold for industrial aristocrats. It means that as each new generation comes along the telegraph management takes as large a portion of it as may be wished, puts it into the great press, rapidly squeezes the youth and freshness and beauty out of it, the best years, too often all the years, out of it, throws it away as a cider maker rejects the juiceless pulp, and turns to replace it with new victims, rosy, plump, and hearty, from another unsuspecting generation. It means that a colossal business is conducted in the interests of a few capitalists regardless of the welfare of the multitudes who do the actual work. It means the oppression of labor, the overworking of employees, the appropriation by the master of all they produce beyond a bare subsistence – the methods that slaveholders always follow, with the added viciousness of caring nothing for the life or health of the slaves, because it costs the master nothing to replace them. Such is the meaning of our telegraph system on its working side—a perennial theft of youth and years, a systematic robbery of toil—a meaning that ought to enlist every lover of manhood and justice in the cause of a national telegraph.

THE TELEGRAPH IN ENGLAND.

[By Judge Walter Clark.]

As taxes upon the diffusion of intelligence among men and deficiencies in the postal service affect everyone, I condense the following from the official report on the workings of the Government telegraph in England made to our Government by the United States consul at Southampton, England, and printed in the last number of the Consular Reports. He says:

On January 29, 1870, all the telegraphs in the United Kingdom were acquired by the Government from the corporations which had previously operated them, and thenceforward became an integral part of the post-office. The English people owed this great measure in their interest, like so many others, to Mr. Gladstone, who bore down all opposition from the companies, who were making big profits. Till then the districts paying best had ample service, though at high rates (as is still the case with us), while whole sections off the lines of railway were destitute of telegraphic facilities. The Government at once extended the telegraph to all sections and reduced the rate to one cent a word. The following is the result: In 1870, under private ownership, 7,000,000 individual messages and 22,000,000 words of press dispatches were annually sent. Now that the telegraph is operated by the post-office the annual number of individual messages sent is 70,000,000 (ten times as many),

[50] The Arena, December, 1895, page 51.

and over 600,000,000 words of press dispatches (thirty times as many) are used. This at a glance demonstrates the overwhelming benefit to the public of the change and their appreciation of it.

The press rates have been reduced so low that every weekly country paper can afford to print the latest telegraphic dispatches as it goes to press, and a telegraph or telephone is at every country post-office. In London the telegraph has largely superseded the mail for all the small and necessary details of life—to announce that you are going to dine at a certain house, or to inform your wife that you are detained on business and not to keep dinner waiting, and the like—over 30,000 telegrams being sent daily in that city alone.

The following is quoted from the consul, verbatim:

> The service is performed with the most perfect punctuality. It is calculated that the average time employed to-day in the transmission of a telegram between two commercial cities in England varies from seven to nine minutes, while in 1870 (under private ownership) two to three hours were necessary.
>
> The rate of 1 cent a word includes delivery within the postal limits of any town or within 1 mile of the post-office in the country. Beyond that limit the charge is 12 cents per mile for delivery of a message. The telegraph being operated as a constitutent part of the postal service it is not possible to state how much profit the Government receives from it, but the English Government does not consider that it should be treated as a source of revenue. It regards it a means of information and education for the masses and gives facilities of all kinds for its extension in all directions.

This unbiased and impartial report, officially made to our Government, is worthy of thought and consideration. It may be added that in every civilized country except this the telegraph has long since been adopted as one of the indispensable agencies of an up-to-date post-office department. Even in half-civilized Paraguay (as we deem it) they have better postal facilities than we, for the post-office there transmits telegrams at 1 cent a word and rents out telephones at $1 per month.

At present, owing to high rates, 46 per cent of all telegrams in this country are sent by speculators (who thus get an advantage over producers) and only 8 per cent are social or ordinary business messages. In Belgium, where the Government rate is less than 1 cent per message, the social and ordinary business messages between man and man are 63 per cent of the whole. Figures could not be more eloquent as to the vast benefit this confers upon the great mass of people, who bear the bulk of the burdens of any government and receive so few of its benefits. With the telegraphs and telephones operated by our Post-Office Department at moderate rates, say, 5 or even 10 cents per message, a similar change would take place here. Individual and news messages would increase tenfold to thirtyfold, as elsewhere—probably more—and the monopoly now held by speculators would cease.

The average telegraph rate now charged in this country, by the reports to Congress, is 31 cents per message—three times the average rate in all other countries under post-office telegraph service; and experts say that our Government could probably afford, with the vast increase of business, a uniform rate of 5 cents, as the average cost of a message is about 3 cents. According to experts the telegraph plants now in use could be superseded by the Government with a superior plant at $15,000,000, while the present corporations are strangling commerce to earn heavy dividends on a watered stock of over $150,000,000.

According to English experience the transfer of the telegraph to the Post-Office Department would result in (1) a uniform rate of 10 cents for ten words between all points, or possibly less; (2) an increase in individual messages of at least ten for every one now sent; (3) an increase in press dispatches of thirty words or more for every one now sent; (4)

a popularization of the telegraph for all uses, social or business; (5) an increase in the promptness of delivery, the average there being now seven to nine minutes as against two to three hours formerly; (6) no section would be destitute, but at each one of our 70,000 post-offices there would be a telephone or a telegraph. By adopting the telephone at most post-offices, instead of the telegraph, the increase in the number of post-office employees would be inconsiderable.

The vast influence of the great telegraph monopoly can be used for political purposes by coloring news and in other more direct ways. When the telegraph service is made a part of the post-office and placed under civil-service rules and subject to the direct force of public opinion, the experience in other countries has been that it exerts no more power on party politics than the army or judiciary. Originally the telegraph (in 1846) belonged to the post-office. When it was abandoned to private corporations on account of its supposed expense, Henry Clay, Cave Johnson, and other leaders of both parties had the foresight to foretell the mischief done in abandoning an essential governmental function to private monopoly.

To prevent this great benefit being given to the masses and to preserve to consolidated capital the control of the most efficient avenues of intelligence with the great advantages thus given that element in addition to the enormous tolls it can thus levy on the rest of the nation, there is practically only the inexorable will of one powerful and exacting corporation which has fastened itself on the body politic. It is the oldest trust in this country. It is the pioneer on which so many others have been patterned. It is the most burdensome because its oppressive tolls restrict communication between men and levy a tax on knowledge. It is illegal, since the Constitution requires Congress to establish the Post-Office, to leave this most essential function of a modern, up-to-date postal service in the hands of private corporations.

The telegraph is a source of gigantic emoluments to these corporations, while the Government restricts its postal services to antiquated and more dilatory processes. It is no wonder that such a postal service is not self-sustaining and shows an annual deficit while the telegraph companies pay enormous dividends. In other countries, where the telegraph is a part of the post-office, that department shows annual profits; but the monopoly fastened on us is intrenched in the sympathy of all other trusts. It has the support of the large city dailies (all owned by large capitalists) who fear the competition of dailies in small towns and of the weeklies if news should become free, and its transmission cheaper, over a Government postal telegraph. It is backed by the powerful lobby which it constantly maintains at Washington, paid out of the excessive telegraphic rates still exacted in this country alone out of a long-suffering and too patient people. And not least, it is said that it distributes franks to every Senator and every Member of Congress. How many accept these favors and how many are influenced by them no one knows except the corporation officials, but that they do know may be seen from the fact that tenders of such favors have not ceased.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 206.

IN THE SENATE OF THE UNITED STATES.

APRIL 10, 1896.—Referred to the Committee on Public Lands and ordered to be printed.

Mr. WALTHALL presented the following

MEMORIAL FROM THE NATIONAL ASSOCIATION OF STATE UNIVERSITIES, IN SUPPORT OF THE BILL (S. 1246) TO MAKE AN EQUITABLE ADJUSTMENT OF THE GRANTS OF LANDS TO THE SEVERAL STATES OF THE UNION FOR SEMINARIES OF LEARNING OR UNIVERSITIES.

To the Senate and House of Representatives in Congress assembled:

The undersigned, representing the National Association of State Universities, and by direction of this association, respectfully present this memorial regarding the needs especially of higher education in the States of the Union, with the prayer for such action on the part of Congress for the increase of educational facilities in the States as may be equitable and in accord with the policy heretofore followed by Congress.

The history of education in the United States, as shown in the various publications of the Government relating thereto, and especially in the second volume of the Report of the Commissioner of Education for 1892–93, shows that the first colonists within our borders, the fathers of the Republic, and all later statesmen who have been leaders in national or in State affairs have recognized the imperative necessity of general and thorough education of the people for the preservation and perpetuation of our institutions. From the very beginning of our history it has been accepted as one of the proper and most beneficent functions of government to aid and encourage schools and all the means for education and the dissemination of knowledge.

In the New England and other colonies this governmental aid and fostering care laid the foundation for the common schools and higher institutions of learning which constitute the machinery for general education in the Eastern and older States. From the first it has been recognized that common schools and higher seminaries of learning are necessary and complementary parts of any properly ordered educational system. In every State of the Union is now maintained a system of public education, whose form and extent have been determined by the past experience and present resources of each State.

The States in which the Federal Government did not control the public

domain have each developed a system of common schools supported by the State, partly from the proceeds of lands set apart for this purpose by the States at an early period and partly from funds raised by taxation. In some of these States, in which the Federal Government did not control the public domain, universities or institutions of higher learning are also established and maintained by the States. This is true in Virginia, North Carolina, South Carolina, Georgia, and Texas. In the Eastern and Middle States the States have aided, but do not control, colleges or universities.

In twenty-nine of the newer States, including all the States lying west of the Alleghany Mountains, excepting West Virginia, Tennessee, Kentucky, and Texas, a definite form was given to educational policy by the legislation taken in the provisions made by Congress for the foundation of these States. This legislation, as shown in the ordinances relating to the disposition of the western territory, adopted by Congress May 20, 1785, July 13, 1787, and July 23, 1787, was the logical result of the sentiment which had prevailed in the colonies from the beginning, and which found definite and forcible expression in that clause of the ordinance of July 13, 1787, which declares that "religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

Following the spirit of the ordinances above referred to Congress inaugurated the policy of granting to the States formed out of the public domain portions of the public lands for common schools and for seminaries of learning or State universities.

At the first was adopted the policy of granting to the inhabitants of each township (act of April 30, 1802), or to the State in which the township was situated (act of June 23, 1836), section 16 in each township for the use of common schools, the amount granted in each State for this purpose being one-thirty-sixth part of the public domain in the State. States admitted since 1848 have received each one-eighteenth part of the public domain within the State for the use of common schools. Grants for this purpose have thus in all cases been proportioned to the areas of the States.

Grants made to the States for seminaries of learning or State universities appear to have their origin in the action of Congress taken July 23, 1787. The earliest acts of Congress in reference to these grants indicate some uncertainty as to the amount of land that would be granted to each State for this purpose. In some States, such as Indiana and Illinois, in the territorial period, one township was reserved from sale to be granted to the State upon its admission into the Union for a seminary of learning. But to Ohio, by the acts hereafter indicated, actually three townships were granted, and upon the admission of Indiana and other States two townships at least have been granted, and some States have received four townships.

The following table, compiled from the History of the Public Domain, published by authority of Congress, under the direction of the public-land commission in 1883, and from other and later official sources, shows the amounts of land granted to the several States and reserved in the Territories for seminary or university purposes by the acts of Congress indicated up to the present time.

Grants and reservations of land made by Congress to the several States and Territories for seminaries or universities.

States.	Acres.	Under what acts.
Ohio	69,120	Apr. 21, 1792; Mar. 3, 1803.
Indiana	46,080	Apr. 19, 1816; Mar. 26, 1804; July 12, 1852; Feb. 28, 1854.
Illinois	46,080	Mar. 26, 1804; Apr. 18, 1818.
Missouri	46,080	Feb. 17, 1818; Mar. 6, 1820.
Alabama	92,160	Apr. 20, 1818; Mar. 2, 1819; Apr. 23, 1824.
Mississippi	46,080	Feb. 20, 1819; June 20, 1894.
Louisiana	46,080	Apr. 21, 1806; Mar. 3, 1811; Mar. 3, 1827.
Michigan	46,080	June 23, 1836.
Arkansas	46,080	Do.
Florida	92,160	Mar. 3, 1845.
Iowa	46,080	Do.
Wisconsin	92,160	Aug. 6, 1846; Dec. 15, 1854.
California	46,080	Mar. 3, 1853.
Minnesota	82,640	Mar. 2, 1861; Feb. 26, 1857; July 8, 1870.
Oregon	46,080	Feb. 14, 1859; Mar. 2, 1861.
Kansas	46,080	Jan. 29, 1861.
Nevada	46,080	July 4, 1866.
Nebraska	46,080	Apr. 19, 1864.
Colorado	46,080	Mar. 3, 1875.
Washington	46,080	Feb. 22, 1889.
North Dakota	86,080	Do.
South Dakota	86,080	Do.
Montana	46,080	Do.
Arizona	46,080	Feb. 18, 1881.
Idaho	96,080	Feb. 18, 1881; July 3, 1890.
Wyoming	46,080	July 10, 1890.
New Mexico	46,080	July 22, 1864.
Utah	46,080	Feb. 21, 1855.
Oklahoma	.....	Thirteenth section in each township reserved for university, agricultural and mechanical college, and normal school purposes.
Total, exclusive of grant to Oklahoma	1,618,080	

It will be noted that the above table indicates the amounts of land which Congress has granted to the States named for seminaries or State universities, as distinguished from other educational institutions, the total amount granted for this purpose being 1,618,080 acres.

Another, and a distinct class of grants has its beginning in the act of July 2, 1862, "donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts."

This act granted "to the several States, for the purposes hereinafter mentioned, an amount of the public land, to be apportioned to each State a quantity equal to 30,000 acres for each Senator and Representative in Congress to which the States are respectively entitled by the apportionment under the census of 1860."

Under this act lands have been granted to all the States and Territories in the Union, the total amount thus devoted to the special kinds of education indicated being for all the States and Territories (excluding Oklahoma, in which the amount granted is uncertain) 10,410,000 acres.

The act of August 30, 1890, makes a further grant to each of the States and Territories, out of funds arising from the sale of public lands, of a sum which now amounts to $20,000 per annum to each State and Territory, and which may be increased to $25,000 per annum.

The apportionment of lands to the States and Territories under the act of July 2, 1862, was made upon the basis of population, as determined, approximately, by representation in Congress. The apportionment of funds under the act of August 30, 1890, was upon the basis of an equal sum to every State and Territory.

Besides *the grants of* land to the several States as trustees made as

above indicated, Congress has occasionally granted portions of the public domain directly to special institutions of learning. The total amount thus granted would not exceed 200,000 acres.

The facts above cited are a sufficient proof that Congress has followed the general policy of encouraging schools and the means of education by making the States the trustees of grants of land, or of funds derived from the sale of public lands, to be used for the maintenance of common schools, seminaries, or universities, and colleges of agriculture and the mechanic arts.

Believing that it has been the purpose of Congress to bestow this aid in such manner and to such extent as would best meet the needs of all forms of education in all the States, your memorialists earnestly ask attention to the special needs of higher education as represented by the "seminaries or universities" in all the States, and particularly in the States of the West and South. In these States the chief responsibility in the work of higher general education has devolved upon the State universities. The original grants of land made by Congress for seminaries or State universities determined this result by giving to these institutions prestige in the early years of the States.

But the growth of the States, as well as the immense increase in the requirements for maintaining a respectable institution of higher learning, has long since shown the grants of land made by Congress to be altogether insufficient for the purposes intended.

In the rapidly settled and populous Northwestern States in the Mississippi Valley the very rapidity of growth in population and well-distributed wealth made it impracticable to await the slow development of higher institutions of learning founded by private munificence, such as have grown in the Eastern States, and rendered universities supported by the States a necessity. In the States farther west sparseness of population, distance from educational centers, and many other considerations have been equally powerful in the same direction.

In the Southern States of the Union the conditions and the needs of education are peculiar. The civil war left this section stripped of its wealth, with its schools and colleges without means of support, and with half the total population over ten years of age classed as illiterate. The Report of the Commissioner of Education for 1892–93, volume 1, pages 119–133, shows the appalling ratio of illiteracy in the population of the South Atlantic and South Central States in 1870, and the following chart, taken from that report, page 119 shows that even in 1890 the percentage of illiteracy in these States was more than four times as great as the average elsewhere in the United States.

The tremendous task which confronted the people of this section when they undertook to reduce this ratio by inaugurating a system of schools which should afford equal educational advantages to the colored and white races, although supported almost entirely by the latter, is shown in the following words of a distinguished Southern educator,[1] who bases his statements upon the census of 1890 and the recent reports of the Bureau of Education:

> The Southern people are mainly engaged in agricultural pursuits, in which money is accumulated slowly, and, notwithstanding the recent rapid increase in manufacturing industries, factories are not yet common in the South. Although a wonderful recuperative power has been shown and considerable material progress made, it is nevertheless true that in comparison with the North the South is still poor. * * * The assessed valuation of Massachusetts in 1890 was $2,154,134,626, or nearly three-

[1] Dr. Julius Dreher, address before American Social Science Association, September 8, 1895.

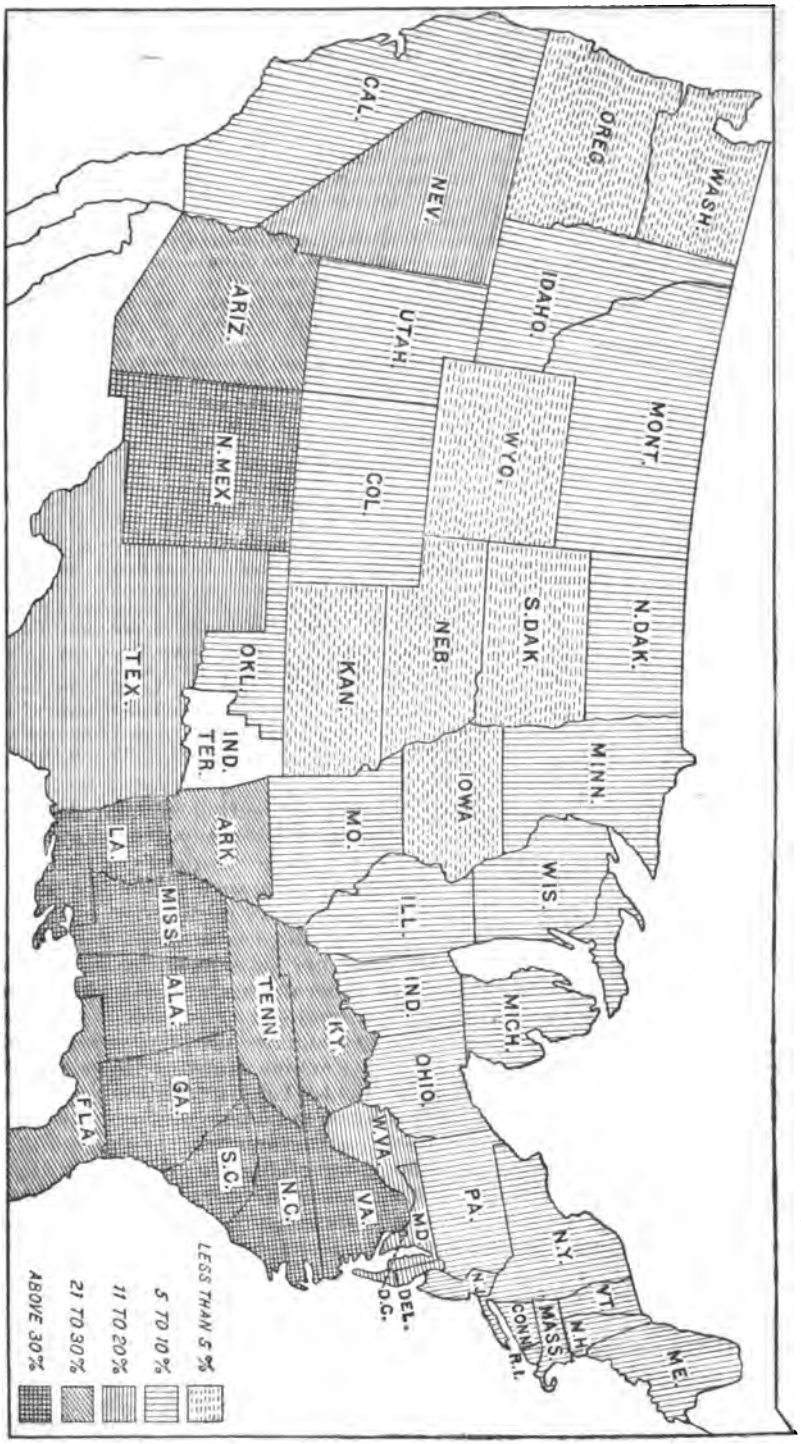

Chart showing the relative density of illiteracy in the States in 1890.

fifths the total assessed valuation of the thirteen Southern States, while the single State of New York (including the city) had an assessed valuation greater than that of these thirteen States together. If some Northern and Southern States be compared, the difficulty of the situation in the South will become still more apparent. Massachusetts, with less than one-fifth the area of Virginia, has an assessed valuation five and a half times greater than that of the Old Dominion. Texas, although five and a half times as large as New York, has an assessed valuation less than one-fifth that of the Empire State. Pennsylvania has an assessed valuation more than seven times that of Kentucky; Connecticut more than double that of West Virginia; and Rhode Island, one-forty-seventh the area of Georgia, has eight-ninths as much taxable property as that great State. * * * The sparseness of population throughout the Southern States is another difficulty in the problem of providing good schools.

New England has 71 people to the square mile, the Middle States 121, the Southern States 22. * * * Before the civil war hardly any provision was made anywhere in the South for the education of the great body of the people, but most of the Southern States established State universities and several military academies, supported by legislative appropriations. * * * When the free-school system was established throughout the South after the war, the States had to bear the burden of maintaining the common schools and the State universities also. Appropriations had to be made, too, for institutions of higher education for the colored people; so that now the Southern States are undertaking to do more than is done by the wealthy States of the North. * * * To the credit of the South, it should be said that in proportion to assessed valuation the Southern States are doing as much as the Northern States for the support of public schools. According to the annual statement of the Commissioner of Education for 1894, the New England and the Middle States expended for public schools in 1892–93 $59,461,708, and the Southern States $18,873,565. As the former have more than three times as much property as the latter, it will be seen from these figures that the South compares favorably with the North in appropriations for public schools. * * * The average total income of colleges and universities in New England is $124,824; in the Middle States, $52,525; in the Southern States, $16,966. * * * If we inquire into the question of libraries, we shall be face to face with one of the weakest features of educational work in the South. * * * The library statistics show that the 19 colleges and universities in New England have 1,173,973 volumes, the 73 in the Middle States 1,328,769, the 115 in the Southern States 633,717 volumes. Average in New England, 62,735; in the Middle States, 18,202; in the Southern States, 5,510 volumes. If comparison should be made as to the value of scientific apparatus and equipment, it would appear that Southern colleges are weak also in this respect.

While much has been done for the promotion of education in the wealthier and more populous States, it still remains true that the institutions for higher education are everywhere inadequate to the great work that lies before them. Increase of population and the wider dissemination of common school and high school instruction have created a larger demand for a broader curriculum in the higher institutions. The enormous advances in all branches of science have made more extensive museums, libraries, and laboratories, and a larger teaching force a necessity everywhere. The sparsely populated States of the West and South are not now able to properly meet these demands, and the very prospect of material growth which some of them has makes it all the more imperative that intellectual and educational advantages of the very best character should at once be provided.

Your memorialists are in a position to know well the pressing needs of most of the institutions of learning of higher grade, and are confident that any aid extended in the manner hereinafter suggested would accomplish largely more for the advancement of higher education than the aid which has heretofore been given by Congress for a similar purpose.

On behalf of the National Association of State Universities, an association which includes the State universities of the various States of the Union, most of which institutions are founded upon the grants of land made by Congress to the several States for seminaries or universities, your memorialists most respectfully and earnestly urge that the Congress of the United States extend to these institutions further aid

which shall be to some extent commensurate with the work which these educational institutions were originally intended to accomplish, and that this aid be made at least equal in amount to that which was given by Congress under the act of July 2, 1862, to the colleges founded for the special study of agricultural and mechanical science in the several States.

The bill introduced by Senator Walthall on the 30th of December, 1895, and numbered 1246, proposes a distribution of a portion of the public lands of the United States to the several States for the maintenance of seminaries or universities, the apportionment to each State to be made upon a basis similar to that upon which the distribution for agricultural and mechanical colleges was made under the act of July 2, 1862. It has been shown in this memorial that Congress has followed four different plans in distributing aid to the States of the Union for schools and other institutions of learning.

(1) The aid granted to the States for common schools was in the form of lands located in the States, and the several amounts granted to the States were proportioned to the areas of the States.

(2) The grants of land to the States for seminaries and universities were of lands located in the several States and vary in amount, not according to any definite policy, from two townships to each State to four townships to each State.

(3) The grants for agricultural colleges under the act of July 2, 1862, were proportioned to the population of the States, as indicated by their representation in both Houses of Congress, being an amount equal to 30,000 acres for each Senator and Representative from each State in Congress, every State sharing in this distribution.

(4) Under the act of August 30, 1890, an equal sum, now amounting to about $20,000, is paid annually to each State out of the proceeds of the sales of public lands for the use of the agricultural and mechanical colleges in the States.

Your memorialists believe that the bill proposed by Senator Walthall will accomplish a much more equitable distribution of the public lands to the States for seminaries or universities than the partial and meager and inequitable apportionment which has already been made for this purpose. While it might have been simpler to petition for a distribution of funds to the States in aid of seminaries or universities out of the surplus arising from the sale of public lands, we are aware that the agricultural and mechanical colleges are largely dependent upon this surplus for their support, and that this fund may be exhausted in the accomplishment of this and other worthy objects. We are also aware of the fact that Congress has never adopted the policy of distributing funds derived from any other source to the States for educational uses.

We therefore urge the passage of the bill introduced by Senator Walthall, with such amendments or modifications as the wisdom of Congress may suggest, in order to make it accomplish efficiently and promptly an equitable adjustment of the grants of land made by Congress to the several States for seminaries or universities.

In support of this measure, it is respectfully urged that Congress has heretofore enacted legislation exactly similar to that which is herein asked, both in form and in purpose; that it has been the unvarying custom of Congress to grant some portion of land for a State university upon the admission of each new State into the Union; that the amounts thus granted, when the quantity and value of the lands are considered, have been altogether inadequate for the purposes intended; that the

aid given by Congress to education in the institutions referred to is proportionately vastly less than that which has been given by Congress to other branches of educational work; that the amounts of land actually given for seminaries or universities to the several States vary largely, and have not been apportioned upon any equitable basis of distribution; that many States have received no portion of the public lands of the United States for seminaries or universities; that this pending bill would turn to a most important use a small fraction of the public domain without expense to the Federal Government, and that the enactment of such a law would give so great a stimulus and efficiency to those institutions which have been recognized by Congress and the several States as agencies for higher education and as most important parts of the educational systems of the States as would affect most favorably all educational work of every grade in all the States of the Union.

Your memorialists further state that the bill presented by Senator Walthall is in such shape as that it may be readily amended so as to make it conform to the existing land laws, or meet any special conditions which Congress may deem advisable to be imposed in the making of the proposed grants.

Your memorialists respectfully and earnestly ask that such legislation be made by Congress as will speedily accomplish the purposes indicated in the above-mentioned bill proposed by Senator Walthall.

Most respectfully submitted.

ROBERT B. FULTON, *Chairman,*
Chancellor University of Mississippi,
WM. O. THOMPSON,
President Miami University,
R. H. JESSE,
President University of Missouri,
A. S. DRAPER,
President University of Illinois,
JAMES B. ANGELL,
President University of Michigan,
Committee National Association of State Universities.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 207.

IN THE SENATE OF THE UNITED STATES.

APRIL 10, 1896.—Referred to the Committee on Commerce and ordered to be printed

Mr. CALL presented the following

LETTERS FROM S. J. RITCHIE, OF AKRON, OHIO, AND FRANK ADAMS, OF MOUNT DORA, FLA., RELATIVE TO THE IMPROVEMENT OF THE OCKLAWAHA RIVER, IN FLORIDA, AND TO CONNECT THE NAVIGATION OF THAT RIVER WITH LAKES GRIFFIN, EUSTIS, AND DORA.

AKRON, OHIO, *April 1, 1896.*

DEAR SIR: Some days ago I had a conversation with you about securing an appropriation for the improvement of the Ocklawaha River, in Florida, and to connect the navigation of that river with Lakes Griffin, Eustis, and Dora. I herewith inclose to you a letter from Mr. Frank Adams, who lives at Mount Dora, in reference to this improvement. I have several times been in that part of Florida during the last year, and the testimony of all the people is unanimous that the railway charges are actually prohibitory of the growth and shipment of anything from that part of the country except oranges.

This is a very serious matter to these people, as their oranges have all been destroyed and they can raise nothing else which they can send to market and get back the cost of production and transportation. Their only hope is an outlet by water transportation, so that boats can pass up through the other lakes into Lake Dora.

Thomas H. Henelbury, in his annual report upon the improvement of rivers and harbors in Florida, which will be found in Appendix N of the Annual Report of the Chief of Engineers for 1895, deals with this improvement on pages 1537 and 1538. He estimates the cost of these improvements at only $12,000. I am not clear whether this estimate provides for the connection of Lakes Apopka, Dora, Harris, Eustis, and Griffin or not.

It hardly seems possible that so trifling a sum could do this. I have not a dollar of personal interest in that country to be served by these proposed improvements, and can not speak as accurately as I would wish of the precise location of these improvements, but the one thing I did see and do know is, that the only hope for the beautiful country surrounding these beautiful lakes is to have the lakes connected with the navigation of the St. Johns by the Ocklawaha.

It would be a small matter for Congress to make an appropriation even three times as large as this estimate to a country so severely stricken as Florida has been. Many people in that part of Florida went from this neighborhood. I promised them when last in Florida that I would go before the proper committees in Congress and do what

I could to secure the necessary aid to make these improvements, and I am so thoroughly impressed with the necessity of having them made, and made at once, that I am willing to make another trip to Washington if I can aid in securing it.

Very truly yours, S. J. RITCHIE.

Hon. WILKINSON CALL,
Washington, D. C.

MOUNT DORA, FLA., *March 29, 1896.*

MY DEAR SIR: I am somewhat dilatory in replying to yours of the 13th. But I fall back on the old excuse, "better late than never." I have made diligent inquiries of all who were at all familiar with that river, and the opinion of the best posted is that $12,000 will open up that water course so that boats of 40 and 50 tons can navigate it without any difficulty. In the same mail I send you Annual Report upon Rivers and Harbors of Florida, with leaf turned down at point of interest.

I see no good reason why this improvement should not be completed at an early day. It will be of great benefit to this part of Florida, as the land along this course is of the best, and with water communication, which will bring with it low freight rates, a vast amount of truck will be produced and shipped North. The outrageous railroad charges almost entirely squelched this branch of industry.

Were this route opened, so that boats could get through and connect with the Ocklawaha boats at Silver Springs, it would be the most interesting and pleasant tourists' route in the State. The whole territory on the bluffs back of this water course is a fine orange country, and if not injured by freezing for the next twenty years that trade alone will furnish a large amount of freight.

You understand that boats do now make regular trips up the Ocklawaha from Palatka to Silver Springs. They run up the St. Johns 25 miles to the junction of the Ocklawaha, and at this season of the year this trip is well patronized, and could it be prolonged through this chain of beautiful lakes it would be a much greater resort. I hope you may succeed in stirring up some interest in Tom Reed's House to do something for this heavily stricken part of our country.

Truly, yours,

FRANK ADAMS.

S. J. RITCHIE, Esq., *Tallmadge, Ohio.*

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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 208.

IN THE SENATE OF THE UNITED STATES.

APRIL 10, 1896.—Referred to the Committee on the Judiciary and ordered to be printed.

The PRESIDENT pro tempore presented the following

MEMORIAL FROM THE NEW YORK CREDIT MEN'S ASSOCIATION FAVORING A UNIFORM BANKRUPTCY LAW.

[The New York Credit Men's Association, organized September 19, 1895.]

NEW YORK, *April 9, 1896.*

SIR: Please find herewith inclosed a memorial of this association. We would feel greatly honored if you would cause it to be published as a Senate miscellaneous document.

We have as a precedent for making this request the fact that your distinguished predecessor caused to be published a similar memorial for friends of ours.

Respectfully yours, F. R. BOOCOCK.

Hon. ADLAI E. STEVENSON,
Vice-President of the United States,
Senate Chamber, Washington, D. C.

To Congress:

Your memorialist, the New York Credit Men's Association, respectfully represents that it is composed of men, both debtors and creditors, who are engaged in securing and giving credit in the transactions of the commercial, professional, and industrial world; that its objects are to prevent imposition, injustice, and fraud among all those within the sphere of its influence, to the end that their prosperity and happiness may be augmented.

Your memorialist calls attention to the fact that under the plan of organizing the Government, as adopted by our constitutional forefathers, it was provided that Congress should enact uniform bankruptcy laws for the whole country, and the States were forbidden to impair the obligations of contracts; that it follows, therefore, that a State can not enact a bankruptcy law; that the fact that Congress has given this constitutional right to the people only for three limited periods has resulted in the several States enacting makeshift laws for the adjustment of the affairs of unfortunate debtors and their creditors; that these attempts on the part of the States constitute a most effective protest against further inaction on the part of Congress; that it was and is, and under the Constitution must always remain, impossible for the States to pass a comprehensive bankruptcy law; that the more their legislatures have struggled with the problem of how to avoid the provisions of the Federal Constitution as above, and at the same time to

give relief to debtors and creditors, the less we know of our rights as debtors and creditors; that with the existing status of State insolvency laws and decisions, confusion and chaos reign supreme, resulting in credit being insecure to those who give it, and costly to those who receive it.

Your memorialist further represents that the failures of those engaged in the various branches of commercial, professional, and industrial pursuits have reached the enormous number of 171,389, and their total liabilities have amounted to the great sum of $2,611,521,704 in the last seventeen years; that this army of unfortunates should not be left without the relief which was guaranteed to them by the Federal Constitution at the time of its adoption, and there ought to be in force a bankruptcy law for the equitable adjustment of the transactions represented by these enormous liabilities.

Your memorialist further represents that although our laws for the promotion of credit have been ineffective and permissive of wrong doing, the actual cash used in conducting business, running the factories, and employing the army of laborers from day to day all over the country is infinitesimally small as compared with the great volume of credit used therein; that, in fact, credit plays so important a part in conducting the affairs of those who do the work of the world that if it should be withdrawn or materially diminished it would well-nigh stop the wheels of commerce and cause untold suffering to labor.

Your memorialist further represents that a perfect credit system would almost do away with the necessity for money; that if credits be secure, the transactions of the business man and laborer may go on uninterrupted, although the speculative world may writhe in the throes of a panic for the want of ready money; that it is, therefore, of the greatest importance to debtors and creditors that our laws should protect the rights of both.

Your memorialist further represents that the enactment of a wise and equitable bankruptcy law would produce many good results, and among them the following: Strengthen the credit of the manufacturers who buy from the producers of raw material, and thereby stimulate the production of all raw materials; extend the credit of jobbers, who buy from manufacturers, and hence increase manufacturing; enlarge the credit of retailers, who buy from jobbers, and thereby enlarge the volume of the retail trade; in extending credit make more continuous than at present the employment of laborers in the various ramifications from the production of raw materials through their various transition periods to their final use by the consumers, and secure to honest unfortunate debtors a discharge, and to dishonest ones a merited punishment, and to their creditors the enforcement of their equitable rights.

Your memorialist further represents that the Torrey bankruptcy bill was originally drafted, and has since been amended from time to time, in the best interests of both the debtor and the creditor classes of the whole country; that it is couched in plain and concise language, and is comprehensive of the principles which such a law ought to contain, and therefore should be enacted at the present session of Congress, not only for the benefit of those who secure and give credit, but for the whole people.

Respectfully submitted.

NEW YORK CREDIT MEN'S ASSOCIATION.
By M. E. BANNIN, *President.*

Attest:
WM. A. PRENDERGAST, Secretary.

A SUMMARY OF THE TORREY BANKRUPTCY BILL (H. R. 7448.)

A summary, in a paragraph, is as follows:

A measure for the discharge of honest insolvents, the diminution of fraud, the prompt and economical administration of bankruptcy estates, the maintenance of integrity in transactions on credit, and the promotion of the industries and commerce.

A summary in brief is as follows:

A voluntary bankrupt is one who petitions to be, and is adjudged such; an involuntary bankrupt is one who has been adjudged such in a suit brought by his creditors. The rights and duties of voluntary and involuntary bankrupts and their creditors are identical.

Farmers and wage earners may go voluntarily into bankruptcy, but their creditors can not bring suits in bankruptcy against them.

Anyone except corporations, irrespective of whether they owe more or less than $1,000, may become a voluntary bankrupt.

Persons, firms, and corporations (except farmers and wage earners) who owe $1,000 or more, and have committed an act of bankruptcy according to the evidence in a fair and impartial trial, before a jury if desired, may be adjudged bankrupts upon the petition of creditors.

An act of bankrupcy by a debtor consists of conduct or acts calculated to defraud the creditors or insolvency followed by a protracted default of payments due or a failure to prevent an inequitable distribution of the estate.

Creditors need not proceed against a debtor who has committed an act of bankruptcy any more than they need sue every debtor who is in default in payment.

A petition can be filed against a debtor who has committed an act of bankruptcy by three creditors who, together, have unsecured claims for or over $500; if there are less than twelve creditors, one of them holding such a claim may file the petition. After the suit is begun the defendant will be served as in ordinary suits, and will have "his day in court" and a trial by jury if he desires.

If a judgment in a bankruptcy suit is for the plaintiffs the defendant will be adjudged a bankrupt. In that event he will retain the exemptions allowed by the laws of the State in which he lives, and, if an honest man, will be released from his debts, and thereby given an opportunity to begin life anew, and be relieved from the demands of his creditors to make good his former misfortunes. If the judgment is for the defendant the petition will be dismissed at the costs of plaintiffs, as in other suits.

The property of the debtor will remain in his possession and under his control until after adjudication that he is a bankrupt, or the dismissal of the petition, unless the creditors shall give bond and secure its attachment; in that event the debtor may retain possession of his property upon giving a forthcoming bond.

The United States district courts will have jurisdiction of the administration of bankruptcy estates. They can not be administered in the State courts, because Congress has no power to compel State courts to administer national laws.

State courts will retain their jurisdiction to hear and determine controversies between the trustee and adverse claimants concerning property rights.

Controversies may be arbitrated or compromised under the direction of the court.

The offices of referee and trustee are the only ones created by the act.

The referee is an assistant judge, and will be appointed in such numbers and in such localities as will be best calculated to secure a prompt administration of the act and serve the convenience of all parties having bankruptcy business.

The trustee will receive the title of the bankrupt to his preperty and administer the estate. He will be elected by the creditors in each case. He may recover all property which has been hidden away or fraudulently conveyed.

The clerk will receive a $10 filing fee in each case and no further compensation.

The referee will receive 1 per cent upon the net amount paid in dividends to creditors from each estate administered before him, or one-half of 1 per cent from estates in which there is a composition, and a filing fee in each case of $10.

The trustee will receive 5 per cent on the first $5,000 paid in dividends to creditors, 2 per cent on the second like amount, and 1 per cent on additional amounts, and in each case a filing fee of $5.

The compensation of the referees and trustees will not be paid until the estates have been administered and the records returned to court.

Making the amount of the fees received and the time of payment depend upon the prompt and economical performance of their duties by the referee and trustee will result in the quick and economical administration of bankrupt estates.

The fees of the clerk, referee, and trustee need not be paid by a proposed voluntary bankrupt who files with his petition an affidavit that he is without and can not obtain the money with which to pay such fees.

The expenses of administering the estate will not be paid until reported in detail under oath and allowed by the court.

The debts which have priority are expenses of caring for the property, filing fees, costs, wages due workmen, clerks, or servants which have been earned within three months, not exceeding $300 to each one, and debts entitled to priority by State or national laws.

Compromises, involving more time in which to pay or a reduction of the amount to be paid, may be readily and cheaply effected between honest debtors and their creditors, under very careful restrictions, after a voluntary or involuntary petition has been filed, and either before or after the defendant has been adjudged a bankrupt.

Compromises which have been fraudulently obtained may be set aside upon application made within six months after they were granted.

A petition for a discharge may be filed by a bankrupt, not a corporation, after two and within the next four months after the adjudication or conditionally within the next six months, but not afterwards; it must be filed in the court where the proceedings are pending. The discharge will be granted unless the bankrupt has been convicted of having committed some one of the acts forbidden by the bill—giving a preference which has not been surrendered, knowingly made a materially false statement in writing for the purpose of obtaining credit, made a fraudulent transfer of his property, or fraudulently destroyed or neglected to keep books or records showing his financial condition.

Discharges which have been fraudulently obtained may be set aside upon application made within two years after they were granted.

Fraudulent bankrupts, embezzling officers, and creditors who have proven false claims may be punished by imprisonment.

Notices will be sent, at trifling cost by the referee, to all creditors of each step in the proceedings, including the hearing on the application of the bankrupt for a discharge.

Creditors may be heard at all times in support of, or in opposition to, any proposed step in the administration of the estate.

Claims may be proven by the simple oath of the creditor, and will be allowed upon being filed in person or sent by mail, without the payment of any filing fee; if it is thought that an allowed claim is fraudulent, it may be suspended and investigated.

Preferences are forbidden, and those which have been given may be set aside if proceedings intervene within four months after they have been given.

Valid liens will be upheld; fraudulent ones will be set aside.

Present legitimate business methods will not be interfered with by the bill. It is not a measure relating to transactions between honest solvent persons, firms, or corporations; but for the relief of honest insolvent debtors, the prevention of dishonesty, and the administration of the estates of insolvent and dishonest debtors more economically and equitably than it is possible to do under present laws.

The bill contains the provisions, in addition to the foregoing, necessary to make it a permanent and complete equitable bankruptcy code.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 209.

IN THE SENATE OF THE UNITED STATES.

APRIL 10, 1896.—Ordered to be printed.

Mr. COCKRELL presented the following

STATEMENT PREPARED BY THE CHIEF OF THE BUREAU OF STATISTICS OF THE TREASURY DEPARTMENT SHOWING THE DEBT OF THE UNITED STATES EACH YEAR FROM JUNE 30, 1865, TO 1895:

Year.	Principal of debt.	Interest paid.	Premiums.	Reduction of principal of debt.	Increase of principal of debt.
Fiscal, ending June 30—					
1865	$2,221,311,918.29	$150,977,697.87	$1,717,900.11		
1866	2,332,331,207.60	146,068,196.29	58,476.51		$111,019,289.31
1867	2,248,067,387.66	138,892,451.39	10,813,349.38	$84,263,819.94	
1868	2,202,088,727.69	128,459,598.14	7,001,151.04	45,978,659.97	
1869	2,162,060,522.39	125,523,998.34	1,074,680.05	40,028,205.30	
1870	2,046,455,722.39	118,784,960.34	15,996,555.60	115,604,800.00	
1871	1,934,696,750.00	111,949,330.50	9,016,794.74	111,758,972.39	
1872	1,814,794,100.00	103,988,463.00	6,958,266.76	119,902,650.00	
1873	1,710,483,950.00	98,049,804.00	5,105,919.99	104,310,150.00	
1874	1,738,930,750.00	98,796,004.00	1,895,073.55		28,446,800.00
1875	1,722,676,300.00	96,855,690.50		16,254,450.00	
1876	1,710,685,450.00	95,104,269.00		11,990,850.00	
1877	1,711,888,500.00	93,160,643.50			1,203,050.00
1878	1,794,735,650.00	94,654,472.50			82,847,150.00
1879	1,797,643,700.00	83,773,778.50			2,908,050.00
1880	1,723,993,100.00	79,633,981.00	2,795,320.42	73,650,600.00	
1881	1,639,567,750.00	75,018,695.50	1,061,248.78	84,425,350.00	
1882	1,463,810,400.00	57,300,110.75		175,757,350.00	
1883	1,338,229,150.00	51,436,709.50		125,581,250.00	
1884	1,226,563,850.00	47,926,432.50		111,665,300.00	
1885	1,196,150,950.00	47,014,133.00		30,412,900.00	
1886	1,146,014,100.00	45,510,098.00		50,136,850.00	
1887	1,021,692,350.00	41,780,529.00		124,321,750.00	
1888	950,522,500.00	38,991,935.25	8,270,842.46	71,169,850.00	
1889	829,853,900.00	33,752,354.60	17,292,362.65	120,668,600.00	
1890	725,313,110.00	29,417,603.15	20,304,224.06	104,540,790.00	
1891	610,529,120.00	23,615,735.80	10,401,220.61	114,783,990.00	
1892	585,029,330.00	22,893,833.20		25,499,790.00	
1893	585,037,100.00	22,894,194.00			7,770.00
1894	635,041,890.00	25,394,385.60			50,004,790.00
1895	716,202,060.00	29,140,792.40			81,160,170.00
Total		2,356,760,931.12	119,863,386.71	1,505,109,858.29	
Year ending Feb. 28—					
1885	1,196,149,600.00				
1886	1,186,058,150.00	50,836,976.89			
1887	1,054,627,650.00	48,388,949.57			
1888	977,140,540.00	45,532,229.53	8,270,842.46		
1889	858,106,220.00	43,500,749.55	17,292,362.65		
Total four years		188,258,905.54	25,563,205.11		
1890*	749,029,520.00	38,109,533.95	20,304,224.06		
1891*	615,501,580.00	42,078,071.98	10,401,220.61		
1892	585,028,080.00	21,112,525.45			
1893	585,034,260.00	27,221,305.20			
Total four years		128,521,436.58	30,705,444.67		
1894	625,872,000.00	27,280,994.37			
1895	685,043,860.00	30,094,818.57			
1896	822,615,170.00	34,135,751.79			
Total three years		91,511,564.73			

* Fiscal years.

TREASURY DEPARTMENT,
Bureau of Statistics, April 9, 1896.

WORTHINGTON C. FORD, Chief of Bureau.

54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 210.

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1896.—Referred to the Committee on Appropriations and ordered to be printed.

The PRESIDENT PRO TEMPORE presented the following:

LETTER FROM THE SECRETARY OF THE TREASURY RELATIVE TO DEFICIENCY APPROPRIATION FOR THE COMPLETION OF THE UNITED STATES COURT-HOUSE AND POST-OFFICE BUILDING NOW IN COURSE OF CONSTRUCTION AT KANSAS CITY, MO.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., April 10, 1896.

SIR: Under date of the 9th ultimo this Department addressed a communication to the Speaker of the House of Representatives, in connection with the United States post-office and court-house building now in course of construction at Kansas City, Mo., in which it was stated that a deficiency appropriation of $116,000 was needed to complete the building, and requesting that this amount be appropriated for that purpose. In the annual estimates of appropriations for public buildings submitted to Congress by this Department there was included an item of $100,000 for the continuation of the said building under the present limit during the fiscal year ending June 30, 1897.

At the request of the chairman of the House Committee on Appropriations, this Department ascertained that for the continuation of work on the building until March 3, 1897, this estimate could be reduced to $50,000, with the result that the latter amount was reported by the said committee in the sundry civil bill, and the appropriation made by the House of Representatives, but no increase of limit of cost was included.

Although the Secretary of the Treasury has the right to contract in advance of appropriations made available for this building, he can not exceed the limit of cost fixed, and it is imperative to the successful completion of the building that the limit be extended at this session of Congress, in order that this Department may be able to make the contracts necessary to prosecute the work uninterruptedly.

I therefore have the honor to repeat to the Senate my recommendation made to the House of Representatives, as above stated, or in case this is not approved, that the limit of cost of this building be increased by the sum of $116,000, which amount, however, need not necessarily be appropriated at this session of Congress.

Respectfully, yours,

J. G. CARLISLE, *Secretary.*

The PRESIDENT OF THE SENATE.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 211.

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1896.—Referred to the Committee on Appropriations and ordered to be printed.

The PRESIDENT PRO TEMPORE presented the following

LETTER FROM THE SECRETARY OF THE TREASURY, RELATIVE TO DEFICIENCY APPROPRIATION FOR THE COMPLETION OF THE UNITED STATES COURT-HOUSE AND POST-OFFICE BUILDING NOW IN COURSE OF CONSTRUCTION IN THE CITY OF OMAHA, NEBR.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., April 10, 1896.

SIR: Under date of the 9th ultimo this Department addressed a communication to the Speaker of the House of Representatives in connection with the United States court-house and post-office building now in course of construction in the city of Omaha, Nebr., in which it was stated that a deficiency appropriation of $100,000 was needed to complete the building and requesting that this amount be appropriated for that purpose. In the annual estimates of appropriations for public buildings submitted to Congress by this Department there was included an item of $125,000, this amount being the balance to be appropriated under the present limit for the construction of said building under the said limit during the fiscal year ending June 30, 1897.

At the request of the chairman of the House Committee on Appropriations this Department ascertained that for the continuation of the work on the building until March 3, 1897, this estimate could be reduced to $70,000, with the result that the latter amount was reported by the said committee in the sundry civil bill and the appropriation made by the House of Representatives, but no increase of limit of cost was included.

Although the Secretary of the Treasury has the right to contract in advance of appropriations made available for this building, he can not exceed the limit of cost fixed, and it is imperative to the successful completion of the building that the limit be extended at this session of Congress, in order that this Department may be able to make the contracts necessary to prosecute the work uninterruptedly.

I therefore have the honor to repeat to the Senate my recommendation made to the House of Representatives, as above stated, or, in case this is not approved, that the limit of cost of this building be increased by the sum of $100,000 which amount, however, need not necessarily be appropriated at this session of Congress.

Respectfully, yours,

J. G. CARLISLE, Secretary.

The PRESIDENT OF THE SENATE.

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54TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 212.

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1896.—Referred to the Committee on Appropriations and ordered to be printed.

The PRESIDENT PRO TEMPORE presented the following

LETTER FROM THE SECRETARY OF THE TREASURY RELATIVE TO A DEFICIENCY APPROPRIATION FOR THE COMPLETION OF THE UNITED STATES POST-OFFICE BUILDING NOW IN COURSE OF CONSTRUCTION IN WASHINGTON, D. C.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., April 10, 1896.

SIR: Under date of February 15, 1896, this Department addressed a communication to the Speaker of the House of Representatives in connection with the United States post-office building being erected in this city, in which it was stated that a deficiency appropriation of $355,000 was imperatively needed to complete the building as at present designed, and that a deficiency appropriation of $115,000 additional to the above, making a total of $470,000, would be required for the completion of the building, if, besides completing the same as at present designed, an independent light and power plant were to be supplied therein, and if the plan of the six upper stories were to be changed from the present design to a modified design which would make available office rooms for the Railway Mail Service, the Bureau of Statistics, the Department of Labor, the offices of Education, Indian Affairs, Geological Survey, the United States Civil Service Commission, the Bureau of Ethnology, and the various other Government offices now occupying rented quarters in this city; and in the same letter this Department requested that the total amount of $470,000 be appropriated for the purpose named above.

In the annual estimates for appropriations for public buildings submitted to Congress by this Department there was included an item of $375,000, this being the balance to be appropriated under the present limit for the continuation of the building during the fiscal year ending June 30, 1897.

At the request of the chairman of the House Committee on Appropriations, this Department ascertained that for the continuation of work on the building until March 3, 1897, this latter estimate could be reduced to $275,000, with the result that the latter amount was reported by the said committee in the sundry civil bill, and the appropriation made by the House of Representatives, but no increase of limit of cost was included.

Although the Secretary of the Treasury has the right to contract in advance of appropriations made available for this building, he can not exceed the limit of cost fixed, and it is imperative to the successful completion of the building that the limit be extended at this session of Congress, in order that this Department may be able to make the contracts necessary to prosecute the work uninterruptedly.

I therefore have the honor to repeat to the Senate my recommendation made to the House of Representatives, as above stated, or in case this is not approved, that the limit of cost of this building be increased by the sum of $470,000, which amount, however, need not necessarily be appropriated at this session of Congress.

Respectfully, yours,

J. G. CARLISLE, *Secretary.*

The PRESIDENT OF THE SENATE.

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54TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 213.

IN THE SENATE OF THE UNITED STATES.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

IN RESPONSE TO

Resolution of the Senate of March 24, 1896, requesting that the Senate be furnished with the correspondence of the Department of State between November 5, 1875, and the date of the pacification of Cuba in 1878, relating to the subject of mediation or intervention by the United States in the affairs of Cuba, transmitting report from the Secretary of State with such papers as seem to be called for by the resolution.

APRIL 15, 1896.—Referred to the Committee on Foreign Relations and ordered to be printed.

To the Senate of the United States:

In response to the resolution of March 24, 1896, requesting that the Senate be furnished with the correspondence of the Department of State between November 5, 1875, and the date of the pacification of Cuba in 1878, relating to the subject of mediation or intervention by the United States in the affairs of that island, I transmit a report from the Secretary of State, forwarding such papers as seem to be called for by the resolution in question.

GROVER CLEVELAND.

EXECUTIVE MANSION,
Washington, April 15, 1896.

The PRESIDENT:

In response to the resolution of the Senate of the United States dated March 24, 1896, reading as follows—

Resolved, That the President be requested, if in his opinion not incompatible with the public interest, to transmit to the Senate copies of all dispatches, notes, and telegrams in the Department of State, from and after the note from Secretary Fish to Mr. Cushing of November 5, 1875, and including that note, until the pacification of Cuba in 1878, which relate to mediation or intervention by the United States in the affairs of that island, together with all correspondence with foreign Governments relating to the same topic—

the undersigned, Secretary of State, has the honor to submit for transmission to the Senate, if deemed compatible with the public interest, copies of such papers on file in this Department as appear to be called for by the above resolution.

RICHARD OLNEY.

DEPARTMENT OF STATE,
Washington, April 15, 1896.

CORRESPONDENCE.

SPAIN.

Mr. Fish to Mr. Cushing.[1]

No. 266.] DEPARTMENT OF STATE,
Washington, November 5, 1875.

SIR: Pursuant to the intimation conveyed in my No. 242, I deem it necessary to recur to the general question of our relations with Spain, and to consider the progress which has been made in disposing of the outstanding questions which for some time past have seriously threatened the relations of the two countries.

At the time of your departure for Madrid, apart from the general question of the unsatisfactory condition of affairs in Cuba and the failure to suppress the revolution, several prominent questions remained unadjusted, the settlement of which was deemed necessary before any satisfactory relations with Spain could be established or maintained. Upon all of these you were instructed.

The most prominent among them were the questions arising from the embargo and confiscation of estates of American citizens in Cuba; those relating to the trial of American citizens in that island, in violation of treaty obligations, and the claims arising out of the capture of the *Virginius*, including the trial and punishment of General Burriel.

After the expiration of more than eighteen months, it seems advisable to examine what progress has been made and to consider our present relations with Spain.

In reference to the arbitrary seizure and withholding of the estates and property of citizens of the United States in Cuba, under proceedings of confiscation or embargo, so called, a separate instruction was addressed to you under date of February 6, prior to your departure for your post.

I referred therein to the general facts surrounding these cases, to the arbitrary action of the authorities, by which the property of American citizens had been seized in violation of treaty provisions, in the absence of judicial proceedings, without hearing, and under such circumstances as to call for vigorous protest and demands on behalf of this Government.

The general facts surrounding these cases are well known.

It is not pretended, so far as I am aware, that any legal justification for these wrongs has been attempted on the part of the authorities of Spain, or that these proceedings in Cuba are defended or upheld.

On the contrary, pursuant to the decree issued by the Government on the 12th of July, 1873, the illegality and indefensible character of these acts were admitted, and the embargoes were ordered to be removed and the property to be restored.

This decree was at first received in Cuba with calm indifference, not even published or adverted to, and the proceedings of the authorities were in no notable respect changed thereby.

[1] Reprinted from House Ex. Doc. No. 96, Forty-fourth Congress, first session.

At the time of the visit of Señor Soler y Pla, minister of ultramar, the decree was in some instances recognized, and some insignificant steps taken, in individual cases, to comply therewith.

In general, however, it was claimed, either that incumbrances existed, making a compliance therewith impossible, or the delivery was offered burdened by leases or incumbrances, and coupled with unfair conditions or demands, or delivery was avoided, on the ground that particular property was confiscated, not embargoed. In fact, the decree was treated in general with supreme indifference.

You were informed that the President, while not disposed to question the willingness of the authorities in Spain to do justice to this Government and her citizens, expected that means would be found to compel the agents in Cuba to obey the orders of the supreme Government.

Such was the condition of the question at the date of your departure. Numbers of American citizens had at this time been deprived of their property, and were anxiously awaiting the performance of the promises and assurances which had been given by the Spanish Government. In spite of all the efforts which you have made, intelligent and energetic as they have been, no effectual result has been accomplished.

Immediately after you had entered on your duties, in your No. 24, under date of June 2, you reported a conversation with Mr. Ulloa, having reference to this question, and in your No. 39, of June 22, you advise the Department of a note addressed to the minister of state, calling attention to the particular cases of Mr. Criado and Mrs. Farres de Mora, and to the general question.

Although orders of disembargo had been issued, and as early as January, 1873, the then minister of state at Madrid had expressed surprise and regret at the continued delay in these particular cases, Mr. Ulloa informed you, under date of July 7, 1874, that the ministry was in want of information as to these cases, and that the information had been requested through the minister of the colonies. He added, however, that the Spanish Government proposed to adopt, with all possible dispatch, a general system with respect to pending embargoes, and that that important question would be set at rest in conformity with the true interpretation of the treaty of 1795, and with that respect which the Spanish Government had for its obligations.

These assurances were repeated to you by Mr. Ulloa (as reported in your No. 95, under date of September 7, 1874), and in your No. 153, dated November 23, it appears that similar statements were again made.

Nevertheless, with all these cases long since brought to the attention of the Spanish Government, with the case of Mrs. Farres de Mora before the minister of state, in connection with that of Mr. Criado, Mr. Ulloa took occasion to reply in the case of Mr. Criado alone, as reported in your No. 195, to the effect that he was not a bona fide citizen of the United States, and thus to avoid the decision of the issue before him.

So far as this case was concerned, Mr. Criado was but one individual jointly interested with others in the decision of a principle, and because some flaw was supposed to have been found as to his right to claim the benefit of the general principle when decided, opportunity was taken to decline to make any decision on the principle itself. It is ascertained, however, not only that the claim that Mr. Criado is not a citizen is not well founded, but a trial of his claim before the mixed commission is progressing, and this question has not there been raised; but the advocate on the part of Spain is understood to have declared himself satisfied as to Mr. Criado's citizenship. The Spanish Govern-

ment thus avoiding the issue, you again argued the question in the cases of Mrs. Farres de Mora and Mr. Delgado, as reported in your No. 322.

Subsequent to this date, in several dispatches, viz, in your Nos. 387 442, 452, and 511 (the last being dated September 8 ultimo), and in several telegrams, you have reported the progress of a scheme of settlement, which it was thought was about to be accomplished, when a change in the cabinet suddenly displaced Mr. Castro.

Whether, had Mr. Castro remained in office, a general order or decree would have been issued of the character referred to in your No. 511, it is of course impossible to say, and whether, if issued, it would have received a more respectful obedience than the prior orders on this question, must also remain unanswered.

However, you state that the question has been reopened, and as you inform me with some prospect of an adjustment. But no adjustment has yet been reached, and the general question has been pending for more than six years.

The kindred treaty question in reference to the trial of citizens of the United States in Cuba by court-martial and the arrest and punishment of our citizens without trial in that island in violation of the provisions of the treaty of 1795 is substantially in the same position. This Government, prior to your appointment, had unfortunately been compelled to interfere in behalf of its citizens on several occasions where the authorities in Cuba had entirely disregarded not only provisions of our treaty, but the rules of civilized warfare.

After your arrival at your post, you addressed the Government in reference thereto on various occasions, both in connection with the confiscation and embargo cases and separately.

The authorities of Spain have been loud in their denunciations of acts of cruelty when perpetrated by the Carlists, and while in some quarters martial law has been looked upon as the natural refuge of the mother country or her colonial authorities, when deemed necessary and convenient, still the same difficulty has occurred in inducing any minister of state to fairly meet the question, and either commit himself to a justification of such practices or to frankly admit that they were in violation of treaty obligations and public law and to provide a remedy.

It is true that in isolated cases, where the Spanish Government has been shown that insistance on trial by courts-martial implied a state of war in Cuba, which might lead to logical consequences, the authorities have admitted the justice of our position, as in the orders sent to the Captain-General in 1873, proposing the trial of the sailors of the bark *Union* by the ordinary tribunals, pursuant to the treaty of 1795, as referred to in my No. 246; but, in general, when these questions have been presented, the different ministers of state have contented themselves with expressing their intention to fairly respond, and the intention of Spain to perform all her treaty obligations. Notably among them you state, in your No. 195, that after having addressed Mr. Ulloa upon this question in Dockray's case he promised to meet the issue.

That promise remains unperformed, and although the late negotiations by which it was hoped some solution of these questions might be reached would have applied also to this question the matter remains undisposed of, and the authorities of Cuba are enabled upon convenient occasion, in obedience to supposed necessity, to again resort to such military tribunals or to punish without a trial.

This simple narration of facts as to these two questions, the promises made and repeated, the assurances given from time to time that some-

thing should be done, the admission of the justice of the demands of this country, at least to the extent of expressing regret for these wrongs and promising redress, followed as they have been by absolutely no performance and no practical steps whatever toward performance, need no extended comment.

In the cases of embargo and confiscation, not only have wrongs been long since done, but continuing and repeated wrongs are daily inflicted. The authorities of Spain in Cuba, during all this time, have been and are using the revenues of the confiscated or embargoed estates, appropriating much of the property itself, and in some cases executing long leases, or actually making sales, either on the allegation that taxes were due or without any excuse whatever.

In the cases of arrest and punishment, citizens of the United States, in like manner, have undergone punishment because the authorities of Spain do not meet the issue and decide the question.

Turning to the questions which arose from the capture of the *Virginius*, and the executions which followed, no extended reference is required.

The particulars of the delivery of the vessel to this Government, and the payment to both Great Britain and the United States of considerable sums as compensation for the acts of the authorities in ordering the execution of 53 of the passengers and crew under circumstances of peculiar brutality, have passed into history.

So far as a payment of money can atone for the execution of these unprotected prisoners, that has been accomplished.

The higher and more imperative duty which the Government of Spain assumed by the protocol of November 29, 1873, namely, to bring to justice General Burriel and the other principal offenders in this tragedy, has been evaded and entirely neglected.

Having made this neglect the subject of a separate instruction, under this date, I abstain from further reference thereto.

While I have no desire to detract from the settlement which was obtained, or to depreciate the action of Mr. Castro, the minister of state, in the payment of the indemnity, particularly as he seemed from the first presentation of the question to be impressed with the justice of the complaint, and to regard with natural aversion the acts which gave rise to it, it is but just, in considering the general course of the authorities in Spain toward this country, to refer to the long delay in reaching an adjustment, and principally to the fact that a basis of settlement was at last reached only after every delay had apparently been exhausted.

As you are aware, Mr. Ulloa, then minister of state, under date of August 18, 1874, and probably impelled by some pressing necessity, addressed the British chargé d'affaires at Madrid, substantially agreeing to settle the claim of Great Britain for the execution of the British subjects on board that vessel.

The equally strong, if not stronger, claim of the United States continued to be discussed in Madrid after the promise of settlement with Great Britain had been made, and information of this adjustment reached this Government a considerable time after its conclusion, and not through the authorities of Spain. Our settlement was only accomplished in the month of March following.

In doing exact justice it is but proper, however, to give Mr. Castro due credit for the payment of the amount finally agreed upon, without further controversy, and before the time stipulated for payment had expired.

In adverting to these delays and failures to meet our just demands on

the part of the authorities, I must express satisfaction with your patience and energy under these adverse circumstances, and particularly in beginning anew with each rapidly succeeding minister of state, and representing again and again these different questions. Progress in these matters has not been delayed from want of information from you, nor from lack of faithful and forcible presentation.

Having touched on these particular questions, which have lately been prominent as disturbing causes with Spain, it is necessary to also refer to the general condition of affairs in Cuba as affecting our relations with the mother country.

In my No. 2, of February 6, 1874 (the first instruction addressed to you on general matters pertaining to your mission), I referred at length to the views entertained by the President and to the position of this Government.

It was then more than five years since an organized insurrection had broken out which the Government of Spain had been entirely unable to suppress. At that time the firm conviction of the President was announced that whatever might be the vicissitudes of the struggle, and whatever efforts might be put forth by the Spanish power in Cuba, no doubt could be entertained that the final issue of the conflict would be to break the bonds which attached Cuba as a colony to Spain.

While remembering and observing the duties which this Government, as one of the family of nations, owes to another member, by public law, treaties, or the particular statutes of the United States, it would be idle to attempt to conceal the interest and sympathy with which Americans in the United States regard any attempt of a numerous people on this continent to be relieved of ties which hold them in the position of colonial subjection to a distant power, and to assume the independence and right of self-control which natural rights and the spirit of the age accord to them.

When, moreover, this struggle, in progress on our very borders, from its commencement has involved the property and interests of citizens of the United States, has disturbed our tranquillity and commerce, has called upon us not infrequently to witness barbarous violations of the rules of civilized warfare, and compelled us for the sake of humanity to raise our voice by way of protest; and when, more than all, we see in the contest the final struggle in this hemisphere between slavery and freedom, it would be strange indeed if the Government and people of this country failed at any time to take peculiar interest in the termination of such contest.

In this early instruction was expressed the sincere and unselfish hope of the President that the Government of Spain would seek some honorable and satisfactory adjustment, based upon emancipation and self-government, which would restore peace and afford a prospect of a return of prosperity to Cuba.

Almost two years have passed since those instructions were issued and those strong hopes expressed, and it would appear that the situation has in no respect improved.

The horrors of war have in no perceptible measure abated; the inconveniences and injuries which we then suffered have remained, and others have been added; the ravages of war have touched new parts of the island, and well-nigh ruined its financial and agricultural system and its relations to the commerce of the world. No effective steps have been taken to establish reforms or remedy abuses, and the effort to suppress the insurrection by force alone has been a complete failure.

In the meantime the material interests of trade and of commerce are

impaired to a degree which calls for remonstrance, if not for another line of conduct, on the part of all commercial nations.

Whether it be from the severity and inhumanity with which the effort has been made to suppress the insurrection, and from a supposed justification of retaliation for violations of the rules of civilized warfare by other violations and by acts of barbarism, of incendiarism, and outrage, the world is witnessing on the part of the insurgents, whom Spain still claims as subjects, and for whose acts, if subjects, Spain must be held accountable in the judgment of the world, a warfare, not of the legitimate strife of relative force and strength, but of pillage and incendiarism, the burning of estates and of sugar mills, the destruction of the means of production and of the wealth of the island.

The United States purchases more largely than any other people of the productions of the Island of Cuba, and therefore, more than any other for this reason, and still more by reason of its immediate neighborhood, is interested in the arrest of a system of wanton destruction which disgraces the age and affects every commercial people on the face of the globe.

Under these circumstances, and in view of the fact that Spain has rejected all suggestions of reform or offers of mediation made by this Government, and has refused all measures looking to a reconciliation, except on terms which make reconciliation an impossibility, the difficulty of the situation becomes increased.

When, however, in addition to these general causes of difficulty, we find the Spanish Government neglectful also of the obligations of treaties and solemn compacts and unwilling to afford any redress for long-continued and well-founded wrongs suffered by our citizens, it becomes a serious question how long such a condition of things can or should be allowed to exist, and compels us to inquire whether the point has not been reached where longer endurance ceases to be possible.

During all this time, and under these aggravated circumstances, this Government has not failed to perform her obligations to Spain as scrupulously as toward other nations.

In fact, it might be said that we have not only been long suffering, because of the embarrassments surrounding the Spanish Government, but particularly careful to give no occasion for complaint for the same reason.

I regret to say that the authorities of Spain have not at all times appreciated our intentions or our purposes in these respects, and, while insisting that a state of war does not exist in Cuba and that no rights as belligerents should be accorded to the insurrectionists, have at the same time demanded for themselves all the rights and privileges which flow from actual and acknowledged war.

It will be apparent that such a state of things can not continue. It is absolutely necessary to the maintenance of our relations with Spain, even on their present footing, that our just demands for the return to citizens of the United States of their estates in Cuba, unincumbered, and for securing to them a trial for offenses according to treaty provisions and all other rights guaranteed by treaty and by public law should be complied with.

Whether the Spanish Government, appreciating the forbearance of this country, will speedily and satisfactorily adjust the pending questions, not by the issue of empty orders or decrees without force or effect in Cuba, but by comprehensive and firm measures which shall everywhere be respected, I anxiously await further intelligence.

Moreover, apart from these particular questions, in the opinion of the

President the time has arrived when the interests of this country, the preservation of its commerce, and the instincts of humanity alike demand that some speedy and satisfactory ending be made of the strife that is devastating Cuba.

A disastrous conflict of more than seven years' duration has demonstrated the inability of Spain to maintain peace and order in an island lying at our door. Desolation and destruction of life and property have been the only results of this conflict.

The United States sympathizes in the fact that this inability results in a large degree from the unhappy condition of Spain at home and to some extent from the distractions which are dividing her people. But the fact remains. Added to this are the large expanse of ocean separating the peninsula from the island and the want of harmony and of personal sympathy between the inhabitants of the territory of the home government and those of the colony, the distinction of classes in the latter between rulers and subjects, the want of adaptation of the ancient colonial system of Spain to the present times and to the ideas which the events of the past age have impressed upon the peoples of every reading and thinking country.

Great Britain, wisely, has relaxed the old system of colonial dependence, and is reaping the benefits in the contentedness and peaceful prosecution of the arts of peace and in the channels of commerce and of industry, in colonies which under restraint might have questioned and resisted the power of control from a distant government and might have exhibited, as does Cuba, a chronic condition of insurrection, turbulence, and rebellion.

In addition to all this, it can not be questioned that the continued maintenance, in the face of decrees and enactments to the contrary, of a compulsory system of slave labor is a cause of disquiet and of excitement to a large class in the island, as also in the United States, which the Government of Spain has led us, by very distinct assurances, to expect should be removed, and which the enlightened Christianity of the age condemns.

The contest and disorder in Cuba affect the United States directly and injuriously by the presence in this country of partisans of the revolt who have fled hither (in consequence of the proximity of territory) as to a political asylum, and who, by their plottings, are disturbers of the public peace.

The United States has exerted itself to the utmost, for seven years, to repress unlawful acts on the part of these self-exiled subjects of Spain, relying on the promise of Spain to pacify the island. Seven years of strain on the powers of this Government to fulfill all that the most exacting demands of one Government can make, under any doctrine or claim of international obligation, upon another, have not witnessed the much hoped for pacification. The United States feels itself entitled to be relieved of this strain.

The severe measures, injurious to the United States and often in conflict with public law, which the colonial officers have taken to subdue the insurrection; the indifference, and ofttimes the offensive assaults upon the just susceptibilities of the people of the United States and their Government, which have characterized that portion of the peninsular population of Havana which has sustained and upheld, if it has not controlled, successive governors-general, and which have led to the disregard of orders and decrees which the more enlarged wisdom and the more friendly councils of the home Government had enacted; the cruelty and inhumanity which have characterized the contest, both on the part of

the colonial government and of the revolt, for seven years, and the destruction of valuable properties and industries by arson and pillage, which Spain appears unable, however desirous, to prevent and stop, in an island 3,000 miles distant from her shores, but lying within sight of our coast, with which trade and constant intercourse are unavoidable, are causes of annoyance and of injury to the United States, which a people can not be expected to tolerate without the assured prospect of their termination.

The United States has more than once been solicited by the insurgents to extend to them its aid, but has for years hitherto resisted such solicitation, and has endeavored by the tender of its good offices, in the way of mediation, advice, and remonstrance, to bring to an end a great evil, which has pressed sorely upon the interests both of the Government and of the people of the United States, as also upon the commercial interests of other nations.

A sincere friendship for Spain, and for her people, whether peninsular or insular, and an equally sincere reluctance to adopt any measures which might injure or humble the ancient ally of the United States, has characterized the conduct of this Government in every step during these sad and distressing years, and the President is still animated by the same feelings, and desires above all things to aid her and her people to enter once more upon the path of safety and repose.

It will be remembered that the President, in the year 1869, tendered the good offices of the United States for the purpose of bringing to a close the civil war in Cuba. This offer was made delicately, in good faith, and in friendship to both parties to the contest.

General Prim, as the representative of the Spanish Government, while recognizing the good faith and friendship with which this offer was made, replied:

> We can better proceed in the present situation of things without even this friendly intervention. A time will come when the good offices of the United States will be not only useful but indispensable in the final arrangements between Spain and Cuba. We will ascertain the form in which they can be employed and confidently count upon your assistance.

The United States replied that its good offices for that object would be at any time at the service of the parties to the conflict. This Government has ever since been ready thus to aid in restoring peace and quiet.

The Government of the United States has heretofore given expression to no policy in reference to the insurrection in Cuba, because it has honestly and sincerely hoped that no declaration of policy on its part would be required.

The President feels that longer reticence would be inconsistent with the interests of both Governments.

Our relations with Spain are in that critical position that another seizure similar to that of the *Virginius*, other executions of citizens of the United States in Cuba, other wrongs of a less objectionable character even than many which have been already suffered by our citizens with simple remonstrance, or possibly even some new act of exceptional severity in Cuba, may suddenly produce a feeling and excitement which might force events which this Government anxiously desires to avoid.

The President hopes that Spain may spontaneously adopt measures looking to a reconciliation and to the speedy restoration of peace and the organization of a stable and satisfactory system of government in the Island of Cuba.

In the absence of any prospect of a termination of the war, or of any change in the manner in which it has been conducted on either side, he feels that the time is at hand when it may be the duty of other Governments to intervene, solely with a view of bringing to an end a disastrous and destructive conflict, and of restoring peace in the island of Cuba. No Government is more deeply interested in the order and peaceful administration of this island than is that of the United States, and none has suffered as has the United States from the condition which has obtained there during the past six or seven years. He will, therefore, feel it his duty at an early day to submit the subject in this light, and accompanied by an expression of the views above presented, for the consideration of Congress.

This conclusion is reached with reluctance and regret.

It is reached after every other expedient has been attempted and proved a failure, and in the firm conviction that the period has at last arrived when no other course remains for this Government.

It is believed to be a just and friendly act to frankly communicate this conclusion to the Spanish Government.

You will therefore take an early occasion thus to inform that Government.

In making the communication, it is the earnest desire of the President to impress upon the authorities of Spain the continued friendly disposition of this Government, and that it has no ulterior or selfish objects in view and no desire to become a party in the conflict, but is moved solely by the imperative necessities of a proper regard to its own protection and its own interests and the interests of humanity, and, as we firmly believe, in the ultimate interest of Spain itself.

In informing the Spanish Government of these conclusions pursuant hereto, you are authorized to read this instruction to the minister of state, or to state the substance and purport thereof, as you may deem most advisable.

You will, of course, keep me advised, by telegraph and by post, of your proceedings pursuant to this instruction.

I am, etc.,

HAMILTON FISH.

Mr. Fish to Mr. Cushing.

No. 267.] DEPARTMENT OF STATE,
Washington, November 5, 1875.

SIR: Herewith you will receive instruction No. 266, being a general review of our relations with Spain, and the announcement of certain conclusions of the President which you are therein instructed to communicate to the Government of Spain.

It has been deemed proper to send confidentially a copy of instruction No. 266 to General Schenck, the minister of the United States at London, with instructions to read the same to Lord Derby, and to suggest to the British Government that it would be agreeable to the United States, and in our opinion tend to the adjustment of the question of the pacification of Cuba, if not to the preservation of general peace, if the British Government would support by its influence the position assumed by this Government.

A copy of this instruction to General Schenck is herewith inclosed.

He has been instructed, as you will perceive, to notify the Department by telegraph of the result of this communication to Lord Derby.

Should it appear probable that the British Government will enforce the position of this Government, it may be wise to defer your interview with the minister of state until joint action can be agreed upon.

Should that Government hesitate or decline, you will be at once instructed to proceed to carry out the instructions contained in No. 266. In case the Government of Great Britain shall determine to support our position by its influence, proper instructions will doubtless be sent to its representative in Madrid to that effect.

As no great delay will be occasioned thereby, it is deemed better to postpone your action in communicating these conclusions until General Schenck shall have communicated the views of the British Government, by telegraph, to the Department, and telegraphic instructions can be sent you based thereon.

A copy of instruction No. 266 will also shortly be sent to all our diplomatic representatives, in confidence, for their information, and the ministers to the principal European courts will be instructed to communicate its purport to the Governments to which they are respectively accredited.

I am, sir, etc., HAMILTON FISH.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *November 25, 1875.*

Your Nos. 266 and 267 have been just received, but not 265.

You call for my opinion; I give it according to my best lights. If Great Britain cooperates, Spain will succumb, in sullen despair, to whatever terms the two Governments may jointly dictate; but if Great Britain refuses to cooperate, Spain will conclude that she has the sympathy of all European powers; more especially, as she thinks she has now gone, by her note of the 15th, to the ultimate point in satisfaction of each of the particular griefs of the United States.

In other words, there will be war, and a popular though desperate one on the part of Spain, unless she can be convinced that the real and true object of the contemplated measure is to prevent war, as I understand it to be intended. But to ward off war will exact the steady exercise of all my personal influence here (which my colleagues tell me is great), and will require that influence to be efficiently backed by my Government both here and at Washington.

I am here to "obey orders though it break owners," as the shipmasters say.

I earnestly beg you, therefore, in proportion as you desire peace, to address me specific and explicit replies in regard to certain most needful instructions which I shall ask for by telegram, provided a negative answer comes from Great Britain.

CUSHING.

Mr. Cushing to Mr. Fish.

No. 684.] LEGATION OF THE UNITED STATES,
Madrid, November 25, 1875.

SIR: I have received your dispatches Nos. 266 and 267. No. 265 has *not yet come to hand.*

My telegram of this date, as called for by you, communicates my impression of the probable effects of the contemplated measure.

Although what is most important in the question will reach you by that telegram long before the arrival of this dispatch, yet it may not be amiss to add here explanations on some less important, but closely related, points.

(1) *The military situation.*—Many of the most thoughtful men in Spain really long for a foreign war as the only efficient remedy for the domestic dissensions which now distract the country.

Moreover, the statesmen of the country foresee that on the close of the war in the North, which can not fail to come in the course of the winter or early in the spring, there will be an army of two or three hundred thousand men to dispose of, with its officers, who will be but too much disposed to dominate in public affairs and push the civilians into the background.

In addition to which, there is a multitude of unthoughtful men, proud, angry, resentful, who would gladly rush into a war with the United States.

Finally, there are the mercenary, the ambitious, the déclassés and the bad, to whom war presents the usual attractions. Multis utile bellum, says Sallust.

It is the received opinion in Spain that for the commencing period of a war she has a more efficient navy than ours.

In these circumstances, if Great Britain declines to cooperate with us, Spain will, at the least, despatch to Cuba at once a large fleet, laden with troops, there to await the eventualities of diplomacy; and she may break off relations, with a hostile appeal to the European Powers.

(2) *The diplomatic question.*—I profess that the contents of your No. 266, from page 40 and the words "In my No. 2" to the end, strike me as a most powerful and effective presentation of the general considerations inducing the proposed announcement of intervention.

I must frankly say, however (and the emergency demands frankness), that the previous contents of the dispatch, from page 1 to page 20, inclusive, do not strike me with equal force of themselves, either as to effect on the Spanish mind or on that of Europe, more especially as appearing here (although not written) after the delivery of the Spanish note of the 15th instant.[1] I almost wish it were less specific.

I should have made a practical suggestion in this respect by telegram but for the supposition that the contents will have been already communicated to Great Britain and other Governments of Europe.

I have no wish to exaggerate the results lately attained by me here. I can not but think, however, that the contents of the late Spanish note, if faithfully carried out in detail, as they certainly would be, go far toward satisfying the particular reclamations of the United States.

If, however, the terms of that note, coming in after your dispatch was written, tend to weaken the force of your argument, still it may, nevertheless, be serviceable to aid you in moderating the temper of Congress.

I have, etc.,

C. CUSHING.

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[1] The Spanish note to Mr. Cushing contained proposals for adjustment of existing differences between the United States and Spain. Its substance was telegraphed to Mr. Fish by Mr. Cushing November 16, 1875. It has no reference to mediation or intervention by the United States in the affairs of Cuba.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *November 26, 1875.*

The response of England lingers. Time passes. I begin with questions for either alternative: First. I can not read your dispatch to the minister; he does not understand English. To state its substance to him orally would be doing extreme injustice to the dispatch.

In just such a case Mr. Canning refused to hear anything without a copy of the document. (Lawrence's Wheaton, seventh edition, p. 388.)

Why not give a copy to the Spanish minister?

Second. Will you authorize me, after the Spanish minister is informed, in whatever way, of the contents of the document, to talk to him as a friend and wellwisher regarding what, in my opinion, Spain ought to do and may honorably do in this emergency?

CUSHING.

Mr. Cushing to Mr. Fish.

No. 686.] LEGATION OF THE UNITED STATES,
Madrid, November 26, 1875.

SIR: My dispatches of yesterday were prepared for the French courier; but as he does not depart until to-day, opportunity is afforded me of adding a supplement to my No. 684.

The finances of Spain are in a very bad condition, simply for want of credit in the stock markets of Europe.

Nevertheless, she is enabled to carry a large floating debt by loans on short time, say six months or a year, and to renew the bonds as they fall due by merely adding the interest to the mass of such floating debt.

But she has considerable resources in reserve for times and occasions of desperation.

First. The Bank of Spain possesses a large metallic fund which the Government could and would seize upon in such emergency, in imitation of what Great Britain did in the wars of the French Revolution.

Second. There is really much wealth in the country, and it would be drawn forth in a war with the United States. Patriotic gifts would come in, forced loans would be submitted to, and the domestic capitalists would more freely advance to the Government.

Third. Spain might recur to forms of credit, which all other nations resort to in the last necessity, as we ourselves did in the legal-tender act. The process would begin with indefinite issue of bills of the Bank of Spain in the whole country, instead of, as now, in the province of Madrid alone; and it would extend to the issue of treasury notes or certificates. To be sure, such action would speedily raise the price of gold, but not to a higher point than it reached with us in similar circumstances.

Meanwhile the augmented circulation would serve, as it did with us, to prompt new enterprises, and thus add to the actual productive resources of the country, not only in industries dependent on war, but in mines and in undeveloped agriculture, to the ultimate advantages of Spain.

The Spaniards are a people preeminently sober in food and drink, economical, and enduring under privations and hardships—as you may

infer from the wages of labor, which vary according to the quality from 2 to 3 or 4 pesetas a day, where, in the United States, similar labor would be reckoned at the same number of dollars. Hence, armies are contentedly supported here, and always have been, so cheaply as to constitute a real addition to the relative military resources of Spain. The contrast in this respect between Spanish and English soldiers struck the Duke of Wellington.

I note these facts as being material and important in the present question. That is, we must not confide in a deficiency of financial resources standing in the way if Spain be hard pushed and stirred up to make sacrifices in case of a war with the United States.

And the finances of Spain are not in a much worse condition than they were in the time of Charles V and his successors of the Austrian dynasty. Great loans were rarer then than now. Spain relied much on wealthy Jews for anticipations, although Jews and Gentiles, in the matter of money lending, incurred hazards quite in proportion to the profits, as illustrated in the hardships of the Jews in Spain and the case of Jacques Coeur in France. In truth, the Fuggers of Augsburg are among the few houses of that class which remain to this day. Hence the terrible financial straits which the Philips—II, III, and IV—were constantly suffering in Spain. Nevertheless, they sustained great wars all over the world.

I add that, according to telegrams received from Habana, the mission of Mr. Rubi has already produced important results, so that he is able to make assurance of having equalized the revenue and the expenditures and of undertaking to pay regularly all current obligations after the 1st of January.

I have, etc., O. CUSHING.

Mr. Fish to Mr. Cushing.[1]

[Telegram.]

WASHINGTON, *November 27, 1875.*

CUSHING, *Minister, Madrid:*

Schenck was instructed to delay presentation of 266, in consequence of your telegram of 16th.

The President's message will discountenance recognition of either belligerency or independence; will refer to the injuries to the United States and its citizens from the long-continued struggle and the absence of prospect of termination; will intimate intervention as an ultimate necessity unless satisfactory results be soon reached, but will abstain from advising it at present; will refer to pending proposals not yet received here, with hope that they may afford the relief required and lead to a satisfactory settlement and removal of causes of grief; will intimate that a communication will soon be made to Congress as to the result of the proposals now on their way, and that, if it do not satisfactorily adjust all important questions, he will before long make a recommendation to Congress of the course to be pursued.

The above is for your guidance in your interview with minister; be careful that it be not communicated by minister or otherwise to the press or public in anticipation of what will be done here.

The instruction 266 is not intended as minatory in any sense but in

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[1] Reprinted from House Ex. Doc. No. 90, Forty-fourth Congress, first session, but omissions supplied.

the spirit of friendship, as a notice of a necessity which may be forced upon the President, but which he hopes to avoid, and desires Spain to aid him in escaping. We are sincerely desirous to preserve peace and to establish all relations with Spain on the most amicable and liberal basis, but we must be relieved and be secure as to the future, and you may give positive assurances to this effect.

You may give copy of 266 to minister, and may speak in the sense indicated in your telegram of yesterday, provided it be not to do away the object of the instruction.

You will make the communication and present copy instruction without waiting for presentation in London.

Schenck will to-day be instructed to read paper as soon as he can.

FISH, *Secretary.*

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *November 30, 1875.*

Dispatch of 5th just delivered to minister of state with verbal explanations as near as foreign idiom would permit in the exact sense of telegram of 27th. Further conference on the subject deferred until after the minister shall have had the dispatch translated, and shall have duly considered its contents. Interview in good spirit.

CUSHING.

Mr. Cushing to Mr. Fish.

No. 692.] LEGATION OF THE UNITED STATES,
Madrid, November 30, 1875.

SIR: I received your telegram of the 27th on the afternoon of Sunday, the 28th, and became informed of its contents just in season to be able to avail myself of the opportunity of meeting the minister of state at the King's dinner in the evening, as recounted in another dispatch, to arrange for an interview with him the ensuing Tuesday.

I repaired to the ministry of state, therefore, to-day, in pursuance of that appointment, for the purpose of communicating to him the contents of your telegram and delivering a copy of your dispatch of the 5th.

Not being willing to trust myself to extemporaneous representation in a foreign language in a matter of so much gravity, I prepared a written statement in Spanish of what I had to say, in form to be read to the minister.

I explained this to Mr. Calderon y Collantes immediately on entering, and without further preface proceeded to read to him the paper, of which copy and translation are annexed.

After listening attentively to the contents of the paper as read, he requested me to leave it with him; to which I saw no objection, as it would thus assume almost the character of a protocol.

I then offered to read to him the dispatch of the 5th, or, if he preferred, to deliver to him a copy. He of course chose the latter alternative.

I then repeated the request already made, that before taking any definite action on the subject he would favor me with another interview. He assented, with the remark that Spain was in no hurry to go to war

with the United States; to which I added, that neither were the United States in a hurry to go to war with Spain.

A little to my surprise, he took the whole matter very coolly, notwithstanding that possible "intervention" was expressly mentioned in my oral statement, and said nothing as to the matter of that, except to express satisfaction at learning that the President proposed to discountenance the concession of recognition of independence or even of belligerence to the insurgents of Cuba.

We then conversed a few minutes on indifferent matters not material to the present subject, except in one particular. He said he had heard we were building a fleet of ironclads. I replied that it might be so, but that no such thing was within my knowledge; that, for myself, I had not a very high opinion of the impenetrability or the manageableness of the huge ironclads which had been built in England, France, and Spain.

This remark of mine led us into reflections on the misadventures of the British *Captain*, *Agincourt*, *Vanguard*, and *Iron Duke*, and the comparative value of them and of the Russian *Popoffkas*, with which the interview ended.

I have, etc., C. CUSHING.

[Appendix B in No. 692.—Translation of remarks of Mr. Cushing to Mr. Calderon y Collantes, read in the interview of November 30, 1875.]

My Government orders me to give to your excellency frank and detailed explanations with respect to the actual state of the questions pending between the two Governments.

On receiving your note of the 15th of the current month, I sent it to London by a special messenger, in order to insure its prompt transmission to Washington. It ought to arrive in the first days of December; that is to say, a little before the meeting of Congress.

I addressed at the same time an extended telegram to my Government, giving it a résumé of the contents of the note in a favorable sense, and subsequently other telegrams in the same sense.

The effect of the telegrams has been advantageous to the good understanding of the two Governments.

Prior to the delivery of the Spanish note of the 15th and to the reception of my telegrams, my Government had addressed to me a dispatch, dated the 5th of the current month, in which are fully recited the subsisting causes of disagreement, all having relation to the condition of Cuba; and in the case of failure to make an amicable settlement of those disagreements, there would suggest itself the only remedy which, in the opinion of the President, remains for the United States, and which he proposed to present to Congress in his message.

But now, in the hope that the contents of the Spanish note may be satisfactory, the President desists from the concrete purpose expressed in the dispatch of the 5th and substitutes a proposition which is merely expectant.

Meanwhile, I am charged in the first place to explain to you confidentially what will be the actual text of the message.

The President will discountenance the concession of the recognition of either independence or belligerence to the insurgents of Cuba; he will allude to the injuries inflicted upon the United States and on their citizens by the prolonged struggle in Cuba, and the absence as yet of clear indications of its termination; he will intimate, as an ulterior necessity, intervention, unless positive results be soon reached, but he will abstain from advising it at present; he will make reference to proposals awaited, but not yet received, in the prospect that those propositions may lead to a satisfactory settlement of all questions of importance; if not, he will submit in due time a recommendation for the consideration of Congress.

I am charged to express to you the hope that these explanations will be received by the Government of His Majesty in the friendly spirit which animates my Government in giving them, and to beg you to consider this unusual and friendly step of an anticipated communication of the contents of the President's message as absolutely confidential, in order to guard against premature discussions in the press, whether of Europe or of America.

Moreover, I am instructed to deliver to you a copy of the said dispatch of the 5th

instant, written before the delivery to me of the Spanish note, and, as is to be supposed, without knowledge of the intentions of the Government of His Majesty.

This dispatch is not conceived in any minatory sense, but on the contrary, in the spirit of friendship, as a notice of a pressing necessity, which may force the hand of the President in given circumstances, from which he desires to save himself, and desires Spain to aid him in escaping them. He sincerely desires to maintain peace and to establish the relations of the United States with Spain upon the most friendly and most liberal bases, provided they contain satisfaction for the present and security for the future; and I am authorized, to this end, to offer the most positive assurances to the Government of His Majesty.

It remains for me to place in your hands the copy of the dispatch of the 5th. It is somewhat long and merits to be read attentively, as well by reason of its contingent importance as for its tone of moderation and of consideration and good will toward Spain.

In conclusion, I beg you, after having read the dispatch and made yourself acquainted with its contents, and before taking any definite resolution in the matter, to do me the favor to grant me another private interview, in order that I may present to you some pertinent observations on my part and on the part of my Government.

Mr. Cushing to Mr. Fish.

No. 698.] LEGATION OF THE UNITED STATES,
Madrid, December 3, 1875.

SIR: Mr. Layard called on me yesterday to say that he had just received instructions by telegraph from Lord Derby to confer with me on the subject of Cuba.

He proceeded to say that General Schenck had read to Lord Derby your No. 266, and that the matter was under consideration in the British cabinet.

He also spoke of his knowledge of conferences between you and Sir Edward Thornton in this respect, without stating whether that knowledge came to him directly from Sir Edward or indirectly through Lord Derby.

Mr. Layard expressed readiness to back me in the matter of Cuba so soon as our respective Governments should have settled on a line of action, and instructed us to that effect.

He expresses great discontent at the failure of Spain to pay attention to the various claims, thirteen in number, presented by him in behalf of his Government, and says that his situation will be untenable here without some improvement in the conduct of the business of the ministry of state.

He thinks Great Britain has abundant cause of her own to interfere in the affairs of Cuba under her slave-trade treaties with Spain.

Further conference between us was deferred until hearing again from Lord Derby.

I received from General Schenck on the 1st instant a telegram dated the 30th ultimo, in the following words:

CUSHING, *Minister, Madrid:*

Have communicated to Lord Derby your instruction 266. He will give me views of this Government on Thursday.

SCHENCK, *Minister.*

I assume that the telegram thus addressed to you within, and on cover to me, is a duplicate transmitted to me in this form in order to save time and labor of preparing a separate and particular telegram for the legation.

I await information as to the decision to have been taken by Lord Derby yesterday, as stated by General Schenck.

I have, etc., C. CUSHING.

Mr. Cushing to Mr. Fish.

No. 699.] LEGATION OF THE UNITED STATES,
Madrid, December 3, 1875.

SIR: I annex hereto translated extract of an article of last night in the Epoca, which constitutes the preface of that journal to a translation it inserts of a long article of antifilibuster spirit from the New York Herald.

The definite references of the Epoca to my interview with Mr. Calderon y Collantes on the 30th, and to the telegrams received from Mr. Mantilla, sufficiently show that the Epoca received its information from some member of the Government.

I have never mentioned the contents, date, or even existence of your No. 266 to anybody except Mr. Calderon y Collantes, not even to Mr. Layard, until he came to speak to me concerning it, on the 1st instant, by telegraphic direction from Lord Derby, as reported in another dispatch.

Of course all which the Epoca says of the contents of that note must have been derived from the Government.

Four things are, it seems to me, worth noting in that article:

First. In speaking of your No. 266, it undertakes to characterize the first part, devoted to the exposition of particular grievances, but makes no allusion to the second part.

Secondly. It gives quite a novel turn to the question of intervention and the relations of Great Britain to that subject, supposing it to be on the part of some "great continental Power" between the United States and Spain. I have no knowledge, nor any ground of conjecture even, as to what Power is thus intended. Is it Germany? Or France? Or Russia?

Thirdly. The Epoca seems to put forward the article of the Herald by way of insinuating the opposition of Great Britain to any positive action of ours on the side of Cuba.

Fourthly. It is observable that the Epoca, thus inspired by the Government, does not speak excitedly, or otherwise betray signs of irritation on the part of the Government on occasion of the suggestion of our possible intervention, ex nomine, as intimated in your No. 266, and also expressly in the oral statement made by me to Mr. Calderon y Collantes.

I have, etc., C. CUSHING.

[Inclosure in No. 699.—Appendix A, No. 699.—Translated extract of leading article in the Epoca of December 2, 1875.]

We have not been mistaken in asserting time and again that, whatever might be the language of the American papers, and however offensive might appear to us the attitude of that Government, we had such confidence in our own right, in the justice of our cause, and in the equity of the Government of Washington, even though appearances represented it as inclined to political extremes, that we have not for an instant become alarmed in view of the bravado of a few journals, nor even because of the too-spirited notes which, according to the public voice, were being exchanged between the two Cabinets. Our hopes have not been fallacious, and we are sincerely glad of it, although this would not have prevented us from meeting with manly resolution any precipitate resolve of the North Americans, sure of not being alone in the contest, and that, however prostrated we may be deemed to be, we still have the means of inflicting serious injuries upon those who might go so far as to risk an armed struggle.

Our hopes have not been deceptive, we repeat, because at the very time that, according to public report, there was received in Madrid a most lengthy note of the date of the 5th of November, energetically recapitulating the grievances of which President Grant thought he had the right to complain, there were also received important official telegrams wherein, in view of the firm attitude and, at the same time, of

the decorous explanations given by our Government, the attitude of the United States essentially changed, the terms of the message were modified, all motive of misunderstanding disappeared, and supposition even went so far as to hint that the Government of the White House would not be averse to admitting the mediation of a great continental Power (y hasta se avanzaba á suponer que el Gobierno de la Casa Blanca no estaría distante de admitir la mediacion de una gran potencia continental).

If these notices are not entirely official, they combine all the traits of likelihood, they circulate and are believed in diplomatic centers, and all the press echoes these and like indications.

The Correspondencia speaks of a friendly conference held by the ad interim minister of state, Mr. Calderon y Collantes, with the Honorable Mr. Caleb Cushing, and gives high praise to the rectitude, the elevated spirit of justice, and the loyalty and conciliatory judgment which the American representative has brought to bear on these questions.

In effect, without omitting in the slightest degree to execute the instructions of his Government; without for a moment neglecting the duties of his difficult position, we have seen the North American minister follow attentively the palpitations of public opinion, study to the bottom the aims and purposes of the Government, transmit faithfully to his own the result of his investigations, and when he became cognizant of the prudent and dignified terms of the note of state, he telegraphed again and again, giving extracts from that document, in order that his Government might not allow itself to be influenced by equivocal impressions.

These telegrams, joined to those which the active representative of Spain would receive and would cause to be known in North American councils; the language of the North American press, which had been modified in a notable manner, and the inconveniences of provoking a rupture which no solid reasons authorize and which would be ill in keeping with the great national solemnity prepared by the United States—all these circumstances combined have doubtless influenced the change of counsel which we logically expected by reason of the knowledge we possess of the springs of politics in the United States.

All this is good, and it is better to prevent adventures than to rush upon them without knowing what their result will be; but the North American men of affairs ought to accustom themselves, in their own interest, to follow a more constant policy, and not to produce continual inquietudes, the consequences of which touch, first of all, their own immense commerce. Let it be left to weak or ambitious governments to cajole and flatter certain passions of the baser sort, and let the United States tranquilly follow the evolutions to which they are invited by domestic difficulties, which it would not cost us much labor to reveal and which demand an efficient remedy.

But we have said that the language of the press had become considerably modified, and it is incumbent upon us to show it. The task is easy, with the article in the New York Herald now before us, and with others which we postpone until to-morrow.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *December 4, 1875.*

Brief important interview with minister of state. He takes office solely in the hope of settlement with us; has carefully read your 266; admits our grievances; is opposed in principle to sequestration of property of foreigners; condemns the delays of redress; will take up and promptly settle each case; will remove all cause of complaint as to treaty; reprobates conduct of local authorities in Cuba as more injurious to Spain than to the United States.

CUSHING.

Mr. Cushing to Mr. Fish.

No. 703.] LEGATION OF THE UNITED STATES,
Madrid, December 5, 1875.

SIR: I availed myself of the occasion afforded by Mr. Calderon y Collantes having been appointed proprietary minister of state to call upon him *yesterday to congratulate* him, and at the same time to repeat

expressions of hope that the Spanish Government would regard your dispatch No. 266 in the light intended, not of a menace, but of a friendly notice of what might be the enforced consequences of the continuance of the present state of things in Cuba; and to say further that it was our common duty, as it seemed to me, to labor together to remove all causes of difference between the two Governments, to do which depended primarily on the attitude of the Spanish Government itself in the presence of subsisting complications.

Mr. Calderon y Collantes replied at once that he concurred with me in this view of the subject; that he should not have consented to leave the post of minister of grace and justice, which best suited him as a lawyer and a magistrate, and to take that of state, which was out of the line of his lifetime pursuits, save only in the hope of being able to cooperate with me in healing all differences, in order to do which he counted much on our long-standing personal friendship and mutual confidence; that he had carefully read and considered the contents of your No. 266, and must confess that the United States had good reason to complain, not only of unjustifiable acts on the part of the local authorities of Cuba, but of the delays and half measures of the Spanish Government to accord redress; that the local administration of Cuba, civil and military alike, had, in his conception, been greatly injurious to the interests of Spain herself, even more than to the United States; that, as a jurist, he repudiated on principle the sequestration of the property of foreigners in Cuba; that if the Spanish note of the 15th ultimo should prove acceptable to the President as a basis, he should be prepared to take up each individual grief as presented, and consider it with me in good faith as if we were associate judges on the bench, and decide it promptly; that while not able conscientiously to admit that by the letter of the treaty civil courts were stipulated for to the exclusion of military, yet he was ready so to arrange the ground of controversy in that relation as to put an end to all reasonable complaint in the premises on the part of the United States.

I could but declare the high gratification it afforded me to receive from his lips the communication of these just and elevated sentiments, which it would be my pleasure to transmit immediately to my Government.

You will have received already by telegram a summary report of the interview; which, however, does not relieve me of the duty of now reporting it in extenso.

I have, etc.,

C. CUSHING.

Mr. Fish to Mr. Cushing.[1]

[Telegram.]

WASHINGTON, *December 6, 1875.*

CUSHING, *Minister, Madrid:*

Your 658[2] received this day, on which Congress meets. Note is being carefully considered. Its tone is recognized as friendly; and such is that of message, which is ready for transmission. The note of 15th suggests no occasion for any alteration. It will be as indicated in my

[1] Reprinted from House Ex. Doc. No. 90, Forty-fourth Congress, first session, but omissions supplied.

[2] No. 658 is the dispatch inclosing Spanish note, already referred to, containing proposals for adjustment of pending differences between the United States and Spain.

telegram of 27th November—will condemn recognition of independence and belligerency in strong terms; will refer to mediation and intervention by other Powers as a contingent possibility if contest be protracted; will intimate readiness to mediate if desired; will in terms abstain from present recommendation of intervention. The text is too long to telegraph, but no just susceptibility should be excited by its purport, statements, or language, which are extremely friendly and conciliatory, but firm.

FISH, *Secretary.*

Mr. Cushing to Mr. Fish.

No. 705.] LEGATION OF THE UNITED STATES,
Madrid, December 6, 1875.

SIR: I received on the afternoon of Saturday the 4th a telegram from General Schenck, purporting to be the duplicate of one sent to you on the 2d instant. It seems proper, however, that you should see a copy of it as deciphered here, and it will accordingly be transmitted, but as a separate dispatch.

Your dispatch No. 267 instructs me to communicate with Mr. Layard on the matter of its contents. I conferred with him fully last evening. He is prepared to cooperate with me now, if there should be any occasion, toward keeping the peace; but my interview with the minister of state on the 4th, as reported by telegram of that day, and more fully by my No. 703 of yesterday, satisfies me that all is going well on the side of the Spanish Government, and that there is no present occasion for the friendly interposition of Mr. Layard. He concurs in opinion of the inexpediency of taking any further step until the arrival of more definite instructions from Lord Derby and yourself.

Mr. Layard expresses opinion, founded partly on personal observation and partly on information received from the British consul-general in Havana, that the present is a very unfavorable moment for attempting intervention, friendly or other, between Spain and the insurgent Cubans. People in Spain are now animated and hopeful as to both civil wars, in view of the large reenforcements recently sent to Cuba, of the pacification of Valencia and Cataluna, and of the extensive military preparations for moving on the positions of the Vasco-Navarrese. Spain needs, he thinks, to be left to try the experiment of the operations of this winter. They are not likely to succeed, at least not in Cuba; and if interfered with now, she will attribute the failure which is to come, not to her own weakness or the strength of the insurgents, but to the disturbing action of the United States. But, left to herself, and thus failing, she will then feel discouraged in proportion as she now feels exalted, and will be in the mood to listen to judicious counsels, whether coming from the United States or from Great Britain.

These remarks of Mr. Layard could not fail to impress me, and so much the more, in consonance as they were with the views expressed in my No. 636 of the 30th of October.

The impression which Lord Derby's observations to General Schenck make on my mind is that of a disposition on the part of the British Government to aid us in a mediatory form rather than as a cooperator in the exercise of forcible pressure on Spain.

Our advance to Great Britain in the present question insures good offices at least, and may go further.

And she might, if she would, powerfully contribute to the solution

of the slavery question, not only as impelled by the same considerations of humanity which actuate the United States, but likewise in virtue of treaties under which she may rightfully assert the freedom of nearly all the bozal negroes—that is, of half the actual slaves in Cuba.

It was a bold step on the part of the President, and it seems to me a wise one, thus to invite the cooperation of Great Britain.

It opens a wide perspective. It looks like breaking down the last barrier of distrust between the two great branches of the British race in Europe and America.

It would seem that now at length, after the lapse of a century of heartburning, the old jealousy of the emancipated colonies toward the mother country, and the rancors of the Sovereign toward rebel subjects become an independent State, had wholly died out, to give place to mutual confidence advantageous to us, but not less so to Great Britain.

The treaty of Washington was, in fact, not merely a settlement of a transitory modern question growing out of our secession war, but a clearing up also of long-standing frets dating back to the war of Independence.

I have, etc., C. CUSHING.

Mr. Fish to Mr. Cushing.

[Telegram.]

WASHINGTON, *December 13, 1875.*

CUSHING, *Minister, Madrid:*

Instruction 266 read to Von Bülow at Berlin on 7th, suggesting good effect if representations made by Germany of importance of ending contest. He expressed desire of Germany for peace and promised to consult Emperor and Prince Bismarck. Read also in same way to Duke Decazes in Paris. He desired to consult English Government. Thought Madrid Government too weak to settle question. Have instructed representatives at St. Petersburg and Vienna to follow same course.

FISH, *Secretary.*

Mr. Fish to Mr. Cushing.

No. 278.] DEPARTMENT OF STATE,
Washington, December 17, 1875.

SIR: I inclose herewith, for your information, a copy of an instruction under date of the 15th November, 1875, to the ministers of the United States at Paris, Berlin, Vienna, Rome, Lisbon, and St. Petersburg, transmitting to them a copy of an instruction to you of the 5th of the same month (No. 266) referring to the relations between this Government and that of Spain.

I also inclose copies of telegram forwarded to and received from those ministers in reference to their proceedings pursuant to such instructions up to and including this date. No telegram has been sent to the legation at Lisbon, and no directions have been given to Mr. Moran since the instruction referred to was addressed to him.

Referring to an instruction No. 805, addressed to General Schenck, of which a copy was transmitted with my No. 267, I also inclose herewith copies of all telegrams addressed to him or by him to the Department in reference thereto.

I am, sir, etc., HAMILTON FISH.

[Inclosures.]

Mr. Fish to United States ministers at Paris, Berlin, Vienna, Rome, Lisbon, and St. Petersburg.
Mr. Fish to Mr. Schenck, November 19, 1875.
Same to same, November 29, 1875.
Mr. Schenck to Mr. Fish, November 29, 1875.
Same to same, November 30, 1875.
Same to same, December 2, 1875.
Mr. Fish to Mr. Schenck, December 6, 1875.
Mr. Fish to Mr. Washburne, December 6, 1875.
Mr. Fish to Mr. Davis, December 6, 1875.
Mr. N. Fish to Mr. Fish, December 7, 1875.
Mr. Hitt to Mr. Fish, December 9, 1875.
Mr. Marsh to Mr. Fish, December 14, 1875.
Mr. N. Fish to Mr. Fish, December 15, 1875.
Mr. Boker to Mr. Fish, December 16, 1875.
Mr. Stevens to Mr. Fish, December 16, 1875.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *December 19, 1875.*

Spanish Government hears to-day from Austria of circular addressed by you to European Governments, suggesting intervention in Cuba. Your 266 evidently intended. If I am interrogated on the subject by minister of state what answer shall I make?

CUSHING.

Mr. Fish to Mr. Cushing.

[Telegram.]

WASHINGTON, *December 20, 1875.*

Two sixty-six communicated also to Russia, Italy, and Austria. Gortchakoff promised if Emperor consent to make representations to Spain toward preservation of good relations, but doubts Russian influence. Italy will instruct minister to urge expediency of fulfilling duties to the United States, and pacifying Cuba, without specifying measures. Austria promises answer this week probably unsatisfactory. Copy all telegrams and circular instruction mailed 17th.

Intervention of foreign Powers was neither asked or suggested at present, but expression of their views desired to impress on Spain necessity of terminating contest, and to avoid necessity of intervention. This course adopted in the direction of friendship and of peace and to exhaust every effort, and avoid all possible suspicion of selfish, unfriendly, or ulterior purposes. You may so reply if interrogated.

FISH, *Secretary.*

Mr. Cushing to Mr. Fish.[1]

No. 730.] LEGATION OF THE UNITED STATES,
Madrid, December 22, 1875. (Received Jan. 17, 1876.)

SIR: You will doubtless have noticed in the London Times of the 9th instant an editorial article of some interest respecting the relations between the United States and Spain.

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[1] Reprinted from House Ex. Doc. No. 90, 44th Cong., 1st sess.

Portions of this article have been translated and published in several of the newspapers of Madrid, with more or less pertinent observations.

I annex translation of the observations of the Cronista, of Madrid (a journal in close affinity with the Government), calling your attention especially to the concluding paragraph, in which is accepted without protest the remarkable phrase of the Times concerning the rule of Spain over Cuba, to the effect that "the limits of her power are the limits of her right."

I have the honor, etc.,

C. CUSHING.

[Appendix A.—No. 730.—Translation of editorial article from El Cronista, Madrid, December 20, 1875.]

THE QUESTION OF THE UNITED STATES.

The Times of the 9th instant, referring to the message of General Grant, and after devoting some little space to the religious question, which is commencing to arise in the United States, and threatens to perturb their interior peace, if not with armed struggles, at least with those moral combats which cause so much injury to civil societies, passes on to analyze very especially that portion of the message which treats of the Cuban question.

The English journal qualifies it as the most important part of the message, and calls observance to the confession of the President that the rebels do not constitute a civil organization which could be recognized as an independent government capable of fulfilling international obligations and worthy of being treated as a power; from which Grant himself draws the inference that to recognize the insurgents as a government would be an act inconsistent with the reality.

And the Times adds:

"Any other conclusion would have come strangely indeed from the Chief Magistrate of a nation which was angry with this country for recognizing the belligerency of the Southern States, although they had a regular government, a fixed capital, agents abroad, a formidable navy, and an elaborately organized army. The Cuban insurgents are as yet little better than splinters of revolt."

The President concludes, and the Times applauds him for it, by saying that it would be imprudent, premature, and indefensible as a measure of right to treat the rebels as belligerents.

But at the same time that the English journal notes these satisfactory statements it observes that in the next line the President lays it down as his opinion that, the indefinite continuance of the war being prejudicial to the subjects of the Republic, it will be necessary for the Spanish Government to do everything possible to conclude it, under penalty of that Republic being obliged to adopt such measures as may be deemed necessary.

And the journal adds:

"It is exceedingly difficult for English observers to do justice to the claims on which President Grant's threats are founded. We are apt to think that they are merely a veil for a determination to seize one of the richest islands in the world. America has long had her eye on Cuba, and it may not uncharitably be thought that she is unwilling to let slip this chance of seizing the prize. But it would be well for us to suspend our judgment till we see a specific statement of the injury which the Cuban rebellion has inflicted upon the United States. It certainly injures trade, and does great harm to many of the President's countrymen. The mischief thus done may be insufficient to warrant more than a remonstrance, or it may call for a less gentle style of treatment."

The periodical then goes on to make reflections upon the possibility of Spain's overcoming the insurrection, and terminates with these notable words:

"Were Cuba as near to Cornwall as it is to Florida, we should certainly look more sharply to matters of fact than to the niceties of international law. But everything, we repeat, depends on those matters of fact. If Spain can suppress the insurrection and prevent Cuba from becoming a permanent source of mischief to neighboring countries, she has the fullest right to keep it. But she is on her trial, and that trial can not be long. When she is made to clearly understand that the tenure of her rule over Cuba depends on her ability to make that rule a reality, she will not be slow to show what she can do, and the limits of her power will be the limits of her right."

Thus ends the article, which, from more than one point of view, deserves to attract the attention of our Government and serve as a stimulus and a spur to it, in order to

accelerate on the one hand the final campaign against the Carlists, and on the other the preparations for another and likewise decisive campaign in Cuba.

It is indispensable—it is demanded by our interest and our honor, pledged before the civilized world—it is indispensable to make a supreme effort and triumph, and triumph speedily, over both insurrections. Neither of the two has succeeded in placing itself in condition to be recognized as a belligerent; both of them are daughters of the disconcertedness in which we have lived, of the debility which the principle of authority contracted among us in a lamentable period of political insanity; both of them are decaying in proportion as authority regains its place and the nation restores itself.

One effort more and we will end it; and let us at every moment think that, in this matter as in many others, it is a melancholy truth that "the limits of our power must be the limits of our right."

Mr. Cushing to Mr. Fish.

No. 748.] LEGATION OF THE UNITED STATES,
Madrid, January 4, 1876.

SIR: Recent publications in New York, London, and Paris, passed around by the telegraph, are drawing attention to the communications made by the United States to European Governments on the subject of intervention in Cuba.

Most, if not all of these publications, will probably have passed under your eye.

I annex, nevertheless, in appendix, several such, which are the subject of particular comment at Madrid.

When questioned in this relation, my answer has been, conformably to the tenor of your telegram of the 20th ultimo, that intervention had neither been asked nor suggested at present, but only expression of views desired to impress on Spain the necessity of terminating the contest and to avoid necessity of intervention, and in the intention of peace and friendship, and to preclude all possible suspicion of selfish or unfriendly or ulterior purposes on the part of the United States.

I think that such is the understanding of the matter in every well-disposed quarter, as evidenced by the state of mind of the minister of state, as reported in my No. 745 of the 2d instant.

The concluding sentences of the communication made by the Marquis de Molins to Galignani's Messenger, and reproduced to-day in Madrid by the Havas Agency, seem intended to imply that some of the European Governments at least have interchanged views on the subject, and in a sense acceptable to Spain, which may be the substance of the information communicated to the Marquis de Molins by the Duc Decazes.

In Madrid there is a dispute on the question whether or not the Spanish Government has taken any action in the premises. But, as we now know, the minister of state is preparing a communication in behalf of Spain.

Speculation is active also as to the ultimate question of what the United States will do if left alone by other powers—whether the President will intervene by force, and if so, whether in armed alliance with Spain, or whether in arms against her and in aid of the insurgents, which it is assumed would be war. Observation of what is going on at the present time in Constantinople respecting Bosnia and Herzegovina, and what occurred there formerly in the matter of Greece, leads many persons to anticipate the development of a similar series of incidents at Madrid as respects Cuba.

Hence, Count Greppi's "Question d'Orient" is read here with interest,

as affording a key to the enigma of coming events, both in Europe and America.

History, it is said, repeats itself, but unfortunately with such variations that we misapply the lesson quite as often as we apply it rightfully, as in the case of the rejuvenated old man of the "Si jeunesse savait, si vieillesse pouvait," by Soulié. And all experience on the bench and at the bar demonstrate that it is much easier to find precedents than it is to adapt them to new facts.

Meantime, while steering as prudently as possible amid the shoals and breakers of these larger questions, I am awaiting patiently the instructions which are to govern me in the pending particular negotiations.

Apropos of which, a letter, purporting to be addressed from Madrid to the New York Herald of the 15th ultimo, puzzles me. Supposing that the pretense of interview with Mr. Cánovas del Castillo and Mr. Ruiz Gomez, two of the Spanish gentlemen plainly alluded to, is fictitious, yet the fact remains that although the Herald has a correspondent here, yet he did not arrive until after the date of this letter; and no American has been here capable of entering so minutely or intelligently into the questions at issue. On the other hand, it is not easy to suppose (although it is possible) that with the aid of some Spaniard of considerable political and juridical experience, such as are continually passing between Spain and Cuba, the letter may have been got up in New York.

On the whole, although the letter contains errors of fact and of language which a Spaniard of the instruction of Mr. Ruiz Gomez, for instance, would not have committed, still the matter of the letter may have been prepared here by some Spaniard of intelligence desirous of thus making his views known to the people of the United States, and sent to New York to be worked into its present shape in the office.

I have, etc.,

C. CUSHING.

[Appendix A in No. 748.—Sundry newspaper extracts in relation to the Cuban question and the attitude of the United States and Spain with respect to foreign powers.]

(A) From the New York Times, December 16, 1875:

"The published report that the United States have submitted proposals to Great Britain, France, and Germany, looking to an intervention in the Cuban question, is contradicted by the language of the President in his recent annual message. In addition, it may positively be asserted that even if this Government should in future be inclined to such intervention, it would do so without asking or desiring the cooperation of foreign powers."

(B) From the London Times, December 30, 1875:

LATEST INTELLIGENCE—SPAIN AND THE UNITED STATES.

[By cable from our American correspondent.]

"PHILADELPHIA, *December 29.*

"The Secretary of State recently addressed a circular to the leading European Governments, including Spain, upon Cuban affairs, suggesting mediation or intervention to restore peace, and asking them if they approved of joining in an international effort for this object."

(C) From the London Times, December 31, 1875:

"WASHINGTON, *December 30.*

"The American minister in London has, in the name of this Government, addressed himself to the English Government for the purpose of learning its views with respect to a collective intervention of the European powers with the object of stopping the bloodshed in Cuba. The English Government has, however, deferred giving a definite answer at present."

(D) From Galignani's Messenger, Paris, December 31, 1875:

"NEW YORK, 30th.

"The American Government addressed recently to the European Powers, Spain included, a circular in which it proposed a mediation or an intervention to restore peace in Cuba, and asked them if they would associate in an international proceeding with that object. On that subject the New York Herald publishes a telegraphic message from Vienna stating that all the Powers, comprising England, have given their adhesion to the proposal."

(E) From Galignani's Messenger, Paris, January 1, 1876:

"We have received the following communication from the Spanish embassy:

"'The New York Herald, according to a telegram from that city, asserts that the Government of the United States had invited the great Powers to join with it in an intervention in Cuba, and that they had consented. That news is erroneous from several points of view. * * * The American note which is already several weeks old, although it was only read to the European cabinet a fortnight ago, does not propose intervention. After having rendered justice to the honorable efforts made by Spain to put an end to the insurrection, it affirms that she is powerless to master it, and exhorts the Powers to make friendly remonstrances to her on the state of things. That conclusion has been coolly received by the European Governments, which have postponed all reply to these overtures. The American ministers have not insisted, nor even left a copy with the Governments to which they are accredited.'"

Mr. Fish to Mr. Cushing.

[Telegram.]

WASHINGTON, *January 4, 1876.*

CUSHING, *Minister, Madrid:*

Would inconvenience result from publication of 266 and attendant correspondence in case Congress call for it?

FISH, *Secretary.*

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *January 5, 1876.*

I think not, seeing that the Spanish Government already has copy of dispatch, and the public generally will consider it in connection with the President's friendly message.

CUSHING.

Mr. Cushing to Mr. Fish.

No. 754.] LEGATION OF THE UNITED STATES,
Madrid, January 7, 1876.

SIR: The ministerial journals continue to publish short paragraphs founded on the communication made to Galignani's Messenger by the Spanish ambassador at Paris, all belonging to the class which the physicians denominate soothing medicines, of which the following, in the Correspondencia, may serve as example, namely:

Various colleagues give account of a note which the Government of the United States passed some weeks since to the cabinets of Europe, in which, after doing justice to the bona fide efforts of Spain to terminate the insurrection in Cuba, the United

States pretends that she is impotent to subdue it, and exhorts other Governments to make friendly representations to that of Spain on the subject.

This vague conclusion has been coldly received by the European Governments, which have deferred making reply to the indications of the United States.

The American ministers have not insisted nor left a copy with the Governments to which they are respectfully accredited.

Such is the truth regarding this incident.

Our own information is to the same effect.

Thus for the Correspondencia.

I add that rumors are afloat of a telegram received by the Spanish Government from London, purporting that Great Britain is proposing to assert her treaty rights to the freedom of the loyal blacks in Cuba.

I have the honor, etc.,

C. CUSHING.

Mr. Cushing to Mr. Fish.

No. 755.] LEGATION OF THE UNITED STATES,
Madrid, January 8, 1876.

SIR: The ministerial journals of last evening continue to rejoice over the tenor of the communiqué of the Marquis de Molins, reported in my No. 748, of the 4th instant.

They now publish a variation by way of New York and London, as follows:

The [American] Government admits having sent to the European Powers a circular respecting the affairs of Cuba.

It denies having proposed a confederation of Cuba and Puerto Rico under a Spanish governor, but it does not publish the text of the circular.

All this, pursue the journals in question, is nothing but the document so coldly received by the Powers to which it was read by the representatives of the United States.

But, nevertheless, in the very same journals appears the following telegraphic item, which seems likely to put a new face on things, namely:

BERLIN, *January 7.*

It is positively asserted that the German Government shows itself favorable to the American circular relative to Cuba, in consequence of the injuries which the present situation of the island involves to the commerce of Germany.

I hear nothing further as to the alleged intentions of Great Britain.

I have, etc.,

C. CUSHING.

P. S.—Since the above dispatch was written the London Times has come to hand, containing a telegram from Vienna, which is annexed. It is confused, illogical, and incorrect, like all such telegraphic reports.

If "Cuba" is a European question of "incalculable consequences," as the telegram asserts, then you had good cause to consult Europe, and Europe has good cause to act in the premises.

It was not in the middle of December, but the 30th of November, that the Spanish Government received copy of your No. 266. See my No. 692 of the 30th November. But intelligence of No. 266 being communicated to European Powers did come here about the middle of December, as reported to you in my telegram on the 19th of December.

C. C.

VIENNA, *January 4.*

The cabinet of Madrid learned in the middle of December from a confidential quarter the contents of the circular note of the United States Government to the European powers relative to Cuba. It thereupon instructed its representatives

abroad to explain to the Governments to which they are accredited that the Cuban question was one not only of American, but of European, interest. Complications between America and Spain might have incalculable consequences for Europe. In the first place, they would encourage the Carlists to make a prolonged resistance and revive the hopes of the Federalist Republicans and Socialists in Spain. The Austrian Government received these declarations in a friendly manner, and will not reply to the long American dispatch, which was only read to the Austrian minister for foreign affairs, and which, moreover, not only repudiates any intention of annexing Cuba, but in reality contains no definite conclusion.

Mr. Cushing to Mr. Fish.

No. 759.] LEGATION OF THE UNITED STATES,
Madrid, January 10, 1876.

SIR: I annex translation of an article from the Cronista, a serious ministerial paper, containing a very formal semiofficial denial of the alleged concurrence of Germany in the suggestion by the United States of intervention in Cuba.

There is report here of the capture of a German vessel charged with supplying arms to rebels in the Filipinas. Count Hatzfeldt informs me that he has no information respecting the affair, but apprehends it will be the occasion of unpleasant controversy.

I annex translation of an article on the subject from a ministerial journal of respectability, the Tiempo.

I have the honor, etc., C. CUSHING.

[Appendix A, No. 759.—Translation of article from El Cronista of January 8, 1876.]

A dispatch of the Agencia Fabra from Berlin, which we published yesterday, as did our contemporaries, gave news, which would be grave if true, that the German Government showed itself favorable toward the American circular referring to Cuba, because of the damage brought upon German commerce by the condition of the island.

Duly informed, we are able to assert that the statement referred to is not true, and that the cabinet of Berlin continues to express the greatest sympathies for our country.

The circular of the Government of the United States has not met with a favorable reception from any European power.

[Appendix B, No. 759.—Translation of article from El Tiempo of January 8, 1876.]

We again call the attention of the Government toward our possessions in the Philippine Archipelago. We know that the enemies of Spanish integrity rest not, although their affairs in London have recently assumed a bad aspect, and that the English Government looks upon them with suspicion.

Upon that immense network of islands of Oceanica belonging to Spain they have fixed their vision. They do not overlook that these offer excellent positions, and they will take advantage of every opportunity to snatch some one of the rich pearls of so precious a jewel.

There, more than anywhere, will they direct their efforts, because elsewhere they will find immediate opposition from first-class powers. If there be vigilance, more than sufficient is Spanish patriotism against all conspiracies, native or foreign; and not for a moment do we doubt that there will be such (conspiracies) as is proved by the news which gives rise to these lines.

Mr. Fish to Mr. Cushing.

No. 286.] DEPARTMENT OF STATE,
Washington, January 11, 1876.

SIR: Referring to previous correspondence on the Spanish question, I now inclose herewith, for your confidential information, a copy of two dispatches, numbered 220 and 222, dated, respectively, the 8th and 14th December, 1875, upon the subject from Mr. Nicholas Fish, chargé d' affaires ad interim, of the United States at Berlin, Prussia.

I am, etc.,

HAMILTON FISH.

Mr. Fish to Mr. Cushing.

No. 288.] DEPARTMENT OF STATE,
Washington, January 11, 1876.

SIR: Referring to my No. 266 and to the various telegrams which have passed in relation thereto, I have to acknowledge the receipt of your Nos. 692, 698, 703, and 705.

With your 692 you inclose a copy of the remarks made by you to the minister of state in your interview of November 30, on presenting a copy of No. 266.

It is perceived that you state that No. 266, dated the 5th November, was written before the delivery to you of the Spanish note of November 15, and "as is to be supposed, without knowledge of the intentions of the Government of His Majesty." In this you are quite correct, as No. 266 bore a date anterior to that of the Spanish note, and was prepared without knowledge of its contents. At the same time, the substance of the Spanish note of November 15 had reached this Government by means of your telegrams of November 16, 18, and 19, prior to my telegram to you of the 27th of November, directing the presentation of the instruction of the 5th of November, and after a careful consideration, a conclusion was reached that it raised no occasion for a change in the instructions which had been sent.

At the conclusion of your memorandum read to the minister of state you requested a further interview before any definite resolution was adopted by the Government of Spain; and in your No. 703 you report an interview with him upon December 4, in which incidental reference is made to instruction No. 266, and in which he appears to have frankly spoken of some of the grievances of which we had complained; but it is not stated whether this is the interview which you had requested should be held prior to any decision being reached on the part of the Spanish Government.

In your No. 698 you report an interview with Mr. Layard, and his willingness to back you in the matter of Cuba, as soon as some joint course of action should be determined on by the two Governments; and in your No. 705 you say that while Mr. Layard is prepared to cooperate with you if there should be any occasion, "toward keeping the peace," your interview with the minister of state upon the 4th had been so satisfactory that there seemed no present occasion for his friendly interposition, and that he concurred in the opinion as to the inexpediency of any further steps, until the arrival of more definite instructions from Lord Derby.

In your interview of December 4, reference to instruction No. 266 appears to have been confined to our particular griefs, no allusion being

made to the general question of the condition of Cuba as distinguished therefrom.

A telegram from General Schenck, dated December 2, says that Lord Derby had received a telegram from Mr. Layard stating that you had requested no definite action on instruction No. 266, in the expectation that the Spanish note might induce the President to modify the views in his message, and that therefore Lord Derby hesitated to act.

I have as yet no written dispatch from General Schenck on the subject of his interview with Lord Derby, and am in hopes, when fuller information is received, that it will show that Lord Derby misapprehended Mr. Layard as to a request being made by you to the Spanish minister that he take no definite action on the communication addressed to the Government at Madrid. It would be unfortunate if such impression had delayed instructions from London to Mr. Layard, or had induced him to postpone the presentation of the views of the British cabinet, which General Schenck represented as willing, in the interests of humanity and friendship, to cooperate in any way short of putting pressure on Spain that promises to bring about a settlement of troubles in Cuba.

General Schenck has not informed the Department as to any late interviews with Lord Derby, and information has not reached me whether any particular instructions have been sent to Mr. Layard. General Schenck's attention has been called thereto.

As several of the other Governments of Europe are understood to have instructed their representatives at Madrid to make representations to the Spanish Government, and as it is presumed that some such representations may have already been made, it is highly advisable that all of these, to be effective, should be as simultaneous as possible.

Early information was given to the Government of Great Britain concerning the course which this Government intended to adopt on this question, in order to secure the effect of any representations which that Government might be inclined to authorize its representative at Madrid to make, so that the effect and purpose of instruction No. 266, in its relation to the general question of the condition of Cuba, should have its full force. The President indulges the hope that you will, by vigorous but prudent and wise insistence, be enabled to secure the position which this Government has taken its full force. He looks confidently to a friendly and satisfactory termination of all pending questions with Spain, including the important one of the termination of the conflict in Cuba.

I am, etc., HAMILTON FISH.

Mr. Cushing to Mr. Fish.

No. 762.] LEGATION OF THE UNITED STATES,
Madrid, January 11, 1876.

SIR: Political circles at Madrid continue to occupy themselves with the question of intervention in Cuba, interest in which is kept excited by the now frequent references to the subject in the journals of England, Germany, and Austria, reproduced by those of Madrid.

Articles heretofore transmitted to you afford pabulum to persistent discussion.

To-day there is a new crop, founded on articles of the Gazette of Cologne and the Press of Vienna.

I annex translation of the article of the Press, with comments of the Epoca, and shall transmit to-morrow translation of the article of the Gazette of Cologne.

Late news from Cuba by private letters narrates the destruction of "Jaquey Grande" and of several ingenios by the insurgents, the capture by them of a railway train between Cienfuegos and Villa Clara, near to the headquarters of Valmaseda at Las Cruces; their operations in the neighborhood of Sagua, and the extreme distress presenting in the departments of Puerto Principe and in Cinco Villas, all of which gives much solicitude to the Government.

I have, etc., C. CUSHING.

[Appendix A, No. 762.—Translation of article from La Epoca of January 10, 1876.]

The more important German journals, the semiofficial ones especially, have expressed the surprise caused to them by the note of the United States Government consulting in regard to the opportuneness of an intervention for the sake of reestablishing peace in Cuba. The Gazette, of Cologne, has published an article well worthy of attracting attention, which we shall reproduce to-morrow; and another from one of the most authoritative Austrian dailies expresses itself in the following no less significant terms:

"The threats against Spain contained in the articles of the New York press and in the last message of President Grant not having produced any results, the news is propogated from New York that the American Government has approached the European Powers, including Spain, with intent of sounding them as to their views respecting the opportuneness of obtaining, by means of united action, the reestablishment of peace in the island of Cuba.

"Should this news be confirmed, it would not be difficult to foresee the reply which would be given by the cabinets.

"Spain, for her part, has nothing to do but to refer to the large reenforcements she has lately sent, and to General Jovellar, as an energetic chief and one well acquainted with the Island of Cuba, whereby a speedy pacification of the insurrection there may be expected. And however much the filibusters and insurgents may attempt to sustain it through the organs of the New York press and the declarations of President Grant, they can only delay the end."

We had anticipated the advice of the Austrian journal. We have in Cuba 70,000 men, excellent soldiers, and 100,000 volunteers, a number more than sufficient to suppress the rebellion should it come out from its fastnesses.

Mr. Cushing to Mr. Fish.

No. 764.] LEGATION OF THE UNITED STATES,
Madrid, January 12, 1876.

SIR: I transmit hereto annexed a translation of the article of the Gazette, of Cologne, respecting intervention in Cuba, referred to in my No. 762 of the 11th instant, with remarks of the Epoca thereon, which article is assumed here to be an expression of the public opinion of Germany on the subject.

I have, etc., C. CUSHING.

[Appendix A, No. 764.—Translation of article from the Gazette, of Cologne, from La Epoca, Madrid, January 11, 1876.]

The article from the Cologne Gazette, to which we referred yesterday, an article the spirit of which is opposed to any Americo-European intervention in the question of Cuba, runs thus:

"The President of the United States could not have found a more unfavorable moment for inviting the European powers to take common measures with the object of restoring order in the confused state of things in the Island of Cuba. Our part

of the world is at present very much occupied in disentangling itself from another analogous question, or at least postponing it for the longest time possible. So long as there is a conflagration in our neighbor, Turkey, and the diplomatic fire-engines are laboring to put it out, Europe has neither time nor room for giving attention to the little fire in the far-off Antilla. But President Ulysses Grant deems it opportune to make his voice heard in the diplomatic concert of the world, so that on this side of the ocean his existence may not pass into the state of oblivion. For this reason, he has caused course to be given to his circular note by his ministry of foreign affairs, of which the papers have spoken for the last few days, and of which we now give a long extract sent to us by our London correspondent."

(Here follows a long extract from the note in question, which is already known.)

"The introduction of this note was already known (at least its principal contents) by means of the message which President Grant addressed a few weeks ago to the Congress assembled for the new session."

(Here the Gazette inserts that part of the message which speaks of the insurrection of Cuba and of the necessity of ending it.)

"To whomsoever reads these complaints, even superficially, it must occur that nothing is needed save to change the proper names to have an exact picture of that civil war which devastated the United States a little more than ten years ago. Not merely destruction and pillage, but also the contempt of the modern laws of warfare, offered in the Southern States a spectacle as moving as that of to day in Cuba, even though we may be forced to recognize that acts as horrible as those of shooting innocent prisoners of war, whose only crime consisted in having taken part in the insurrection, may be excused as measures of reprisal on the part of the Northern States.

"Scenes as fearful as those which passed in the prison of Andersonville, in contempt of the lightest demands of humanity and under the superior vigilance of Captain Wirz, of the Southern States, have had no equal in Cuba. And, in spite of that, the United States opposed by every means any European interference in a civil war, and not [sic] with full right, as was recognized at least in Germany, where the state of things was then judged with more coolness than in France and England. As apart from this the statistical data prove conclusively that the commerce of Cuba has developed itself in spite of the insurrection, Spain, in rejecting all foreign interference, can simply refer to the precedent set by the United States.

"In a letter from Madrid of official origin, which one of our Parisian correspondents recently mentioned, it is said that the insurrection mainly has its focus in those interior parts of the island which, by reason of being covered with impenetrable woods and morasses, are uninhabitable for Europeans; that it does not possess a single town of importance, and that it never has been able to attain the point of conducting even a moderately regularized warfare. President Grant has recognized this fact when he declares in his message that the real facts do not properly permit of recognizing the insurgents as possessing the character of belligerents.

"In our opinion the European powers have still far less motives for intermixing in the Cuban disturbances. Much to the contrary. If Europe has an interest in the affairs of Spain, it is to avoid all that might lead that country out of the pathway of order upon which it now seems to have entered. This question has no more sensitive point than Cuba, and the sovereign who, as the result of foreign pressure, might find himself forced to dissolve or even weaken the ties which united the colony to the mother country, would feel the ground slipping from under his feet.

"Now then, to shake the throne of Alfonso XII might eventually please the trans-Atlantic Republic, but assuredly would not please the states of the Old World. It appears, moreover, as if President Grant finds no support in his own country for his designs, because it is only too generally suspected that he touches on foreign questions and treats largely of them for the purpose of finding himself, in the moments of serious complications, as an experienced general, the sole master of the situation. He himself seems to have a firmer conviction that he personally is absolutely necessary, than the people of the United States appear to have. The negative replies he will in all probability get from all the foreign cabinets may make mention of the present greatly improved situation of the Government of Madrid with respect to the Carlist insurrection. There are hopes that the Peninsula will soon be freed from the pest of civil war, and then the moment will have come for putting an end, with redoubled energies, to the insurrection in Cuba. As Europe has played for so many years the part of a tranquil looker-on, she may well wait, in all conscience, a few months yet, before taking into consideration the question whether there is room for intervening."

This language, friendly toward Spain and prudent in what relates to the relations of Europe with our country, is the more significant as the significance attributed to the Gazette of Cologne is great. It should be borne in mind, however, that this article has been republished by the North German Gazette, as though seeking to make it appear that these are the opinions of Germany, already officially known by the

silence with which was received the note of the Government of the United States, which Government, for its part, can not withdraw from the positions set forth in the Presidential message.

Mr. Cushing to Mr. Fish.

No. 771.] LEGATION OF THE UNITED STATES,
Madrid, January 14, 1876.

SIR: In turning over the leaves of one of the bound, but unindexed, volumes of dispatches in the legation, in search of a particular paper, my sight fell on a dispatch of Mr. Seward, addressed to the diplomatic representatives of the Governments abroad, on the subject of foreign intervention in the United States between the Union and the Southern Confederates.

It is a printed circular, dated August 18, 1862.

This document may not have fallen under your observation; and if not, it may be worthy of perusal, as presenting the obvious arguments against intervention common on both sides to all questions.

It is an apt illustration of the rhetorical theorem of commonplaces—arguments pro and contra on a question—with which college studies rendered us all familiar in the pages of Cicero's Topica.

There is no instruction in this dispatch to communicate it or its contents to other Governments, and it does not otherwise appear to have been communicated to that of Spain.

But the document acquired general publicity by being communicated to Congress annexed to the next annual message of the President (Ex. Doc., 1862–63, vol. 1, p. 176), and may, therefore, have become known to the Spanish Government.

The mini ter of state at the time was D. Saturnino Calderon y Collantes, in the second administration of General O'Donnell. It was not until his third administration that D. Fernando Calderon y Collantes, the present minister of state, entered the cabinet as minister of grace and justice.

Whether or not the present ministers have knowledge of this document does not appear. Probably not, for such has been the political anarchy and ministerial shiftiness of the recent years in Spain—such the wild contention of parties—and so complete the absence of authentic history, amid the immense mass of polemical publications and of extravagant party diatribes, absurdly dignified with the name of history, in the presence of which the tragedy of cruel wars and ever-recurring rebellions and the comedy of transitory quarrels of mere personal ambition and partisanship, serve to crowd out of sight all things of serious importance that this document is not likely to be remembered, if it was ever within the knowledge of the public men of Spain.

Thus, while there is no end here of books of literary criticism, romance, poetry, and plays, and especially the rubbish of party disquisitions, more or less elaborate, which the future historian of the country will have to toil through with disgust and shame; all my efforts thus far have failed to obtain any, even the most superficial, account of the six great acts of the reign of Queen Isabel, namely: the successive military adventures in Rome, in Santo Domingo, in Morocco, in Mexico, on the coast of Chile and Peru, and in Cochin-China.

While, therefore, it is quite improbable that the ministers of to-day have any recollection, if they had any knowledge of Mr. Seward's cir-

cular, yet certain it is that the arguments contained in its second, third, and fourth commencing paragraphs and in its four penultimate paragraphs, are such as continually meet my eye in the newspapers, and my ear in conversation, at Madrid.

I have, etc., C. CUSHING.

Mr. Cushing to Mr. Fish.

No. 776.] LEGATION OF THE UNITED STATES,
Madrid, January 15, 1876.

SIR: In continuation of noticeable articles concerning Cuba, please find annexed translation of two short editorials of the Cronista and the Epoca, both ministerial journals, the former commenting on language attributed to the President.

The Politica prints in translation an article of the New York Herald of the 28th ultimo, purporting to report an interview of its correspondent with yourself, and makes prefatory and concluding comments thereon, which are also annexed in translation.

I have, etc., C. CUSHING.

P. S.—Permit me to call your attention to an editorial on Spain, with incidental reference to intervention in Cuba, of the London Times of the 10th instant.

[Appendix A, No. 776.—Translation.—Editorial paragraph from La Epoca, Madrid, January 14, 1876.]

The effort continues to cause the belief that the relations between Spain and the United States are not good, when the exact opposite is the case.

A telegram has gone the rounds announcing that in the roads of Port Royal, S. C., the American squadron would be concentrated, but it needs one to be denuded of all political common sense to suppose that when the Exposition is in full blast, conflicts are to be provoked, and as the desire of the North Americans is to have the Cuban war ended, we trust to be able to satisfy their desires shortly, if, indeed, the name of a war can be applied to the rebellion, sustained in the shelter of the impenetrable woods, without having mastered a single important town and without having organized a government.

The only thing we know for certain is that the religion of the insurgents is idolatry, which must be very gratifying for the traitors, who, in order to escape merited chastisement, go to swell the ranks of the rebels.

[Appendix B, No. 776.—Translation.—Editorial article on Cuba, from El Cronista, Madrid, January 14, 1876.]

The right which is on the side of Spain in the affairs of Cuba is so clear and so patent that it could not fail to have been recognized, even though shamefacedly and in private circles, by the President of the United States, General Grant. We were right in asserting, as we have repeatedly done, that the parliamentary curvets (excarceos) of the Government of the American Republic with respect to the question of Cuba obeyed, rather than its own opinions, electoral machinations, and the pressure of the filibuster element, so numerous in the United States.

We say this à propos of an important piece of news which we receive to-day by the Cuban mail. A Habana paper publishes correspondence from New York, in which it is positively said that the President of the United States has declared in private circles that he considers the independence of the Island of Cuba as impossible, and that its annexation to the United States would cause immense injuries to the country.

If General Grant has said so, he has spoken like a book, even though he has required some seven years to convince himself of that which was seen and said from the beginning by those who well knew the especial circumstances of the Great Antilla.

Perfectly do we agree with the President of the United States that the Island of Cuba can not be independent, because it does not possess the indispensable elements to constitute a state capable of governing itself in peace, with preservation of even a portion of the culture and prosperity it has acquired under the Spanish flag; and the reasons which he alleges for pronouncing against its annexation appear to us to be very well founded.

All this is logical and natural; but as the Eco de Cuba very rightfully remarks, President Grant has not duly considered the deduction he draws, that "a friendly intervention is the only thing which can restore peace in the island, obtaining from the mother country the concession of autonomy under the protectorate of Spain."

The Island of Cuba not being able to govern itself well as an independent and sovereign State could still less do so as an autonomic semi-State, and in such circumstances it were in every way impossible for Spain to reserve to herself a protectorate which, without positive benefit to Cuba, would drag the mother country into the most serious complications within and without this territory.

To prove this absolute impossibility so many considerations throng to the subject that it is no small task to select the prominent ones.

In the Island of Cuba there exists an immense majority which does not desire separation, which does not desire annexation, which does not desire autonomy, which wishes to keep on in the same conditions as those in which they have lived with respect to the mother country. In the Island of Cuba there exists a slender minority which is split up into "independents," "annexationists," and "autonomists." The immense majority reject autonomy, which would weaken their ties with the mother country. The independents and the annexationists are not content with autonomy, which does not satisfy their aspirations. The autonomists would be the only ones left satisfied, but they are so few in number that they would lack moral and material strength.

The Eco de Cuba, then, is right: the Great Antilla is not fitted to be anything save what it has been hitherto. Thus it is that the right of Spain is supported by every kind of reason based on expedience. Therefore, in spite of all the efforts of the ambitious ojalateros (sans culottes) of New York, and in spite of the misdeeds of the criminals of the manigua, the Island of Cuba will continue to be a Spanish province.

[Appendix C in No. 776.—Translation.—Extracts from an editorial article from La Politica, Madrid, January 14, 1876.]

In the New York Herald of the 28th (ultimo) we find a conversation which took place between a reporter of that paper and the Secretary of State, Mr. Fish. That conversation demonstrates to what extent the news published by the North American press concerning complications between the United States and Spain are fantastical and of pure caprice. Our readers will also thereby see confirmed the opinion which we have always expressed, that the relations between the two Governments maintain themselves on a cordial and friendly footing.

This is what the Herald relates:

"As the press and public men on this side of the water, in Spain, and out of Spain are given to discoursing of combats, conflicts, and disasters growing out of the Cuban question, we hope that the positive language of the North American Minister of State will serve to calm impressionable minds and restore the truth of the facts."

Mr. Cushing to Mr. Fish.

No. 777.] LEGATION OF THE UNITED STATES,
Madrid, January 16, 1876.

SIR: I called on the minister of state yesterday, in conformity with previous request of his, to relieve his solicitude regarding the non-arrival of your instruction on the subject of his note of the 15th of November.

I told him that my dispatch, covering that note, only reached you on the 6th of December; that my last dates from you were on the 22d of December; that no more time had elapsed than might naturally be required for the due consideration of the points of detail involved; and that therefore there was no delay to give cause of solicitude.

He said it had occurred to him that you might have concluded not to act until after hearing from the European Governments whose opinion you had asked in the matter; and that in this view he had resolved to defer writing the contemplated responsive circular of Spain to those Governments until after hearing from you, as he was anxious to avoid saying or doing anything which might infer offense to the United States.

I expressed gratification at his taking this view of the subject, and said that his conjecture might be correct, but that I had no information on which either to contradict or confirm it.

He then proceeded to say that he wished you were seated by his side, as I was, that he might say to you in the unreserve of friendship and outside of diplomatic forms that the United States could desire nothing in the sense of peace, good government, or liberty in Cuba which the Government of Don Alfonso does not desire still more earnestly; that his Government freely admitted the political expediency and necessity of abandoning the old colonial system and of promptly consummating the emancipation of the slaves; that the predatory bands of runaway blacks, headed by foreigners from Dominica and Venezuela, engaged in the work of incendiarism and devastation, in face of which all the social forces of the island were devoted to self-defense, were the only obstacle to the introduction of radical reforms in Cuba; that if the slaves were now emancipated at once many of them would betake themselves to the mountains as maroons and become additional agents of disorder and bloodshed; that he did not admit as possible the idea that the President contemplates acts of naval or military hostility on the side of those incendiary bands in order to obstruct or possibly defeat the efforts of Spain to restore order, to do which would of course be simply the commencement of war of aggression against Spain; and that if it were in his power to speak to you directly he would embrace the privilege to beg you to tell him explicitly—as a friend, if you would permit, and if not, as a statesman and a man of honor—what is the precise thing which you would advise or wish Spain to do under the mediation of the United States, with the assurance that if the thing proposed were just and practicable—and he could not conceive that you would propose anything unjust or impracticable—Spain would be but too glad to do it, as well in her own interest as in good will toward the United States, and in the consciousness that the United States and Spain are by commercial ties inseparably associated in the question of the tranquillity and prosperity of Cuba.

I confess these remarks of Mr. Calderon y Collantes made an impression on my mind which he may or may not have intended, but which, nevertheless, seems to me to be the inner thought behind the words uttered, namely:

If what the United States contemplates is, whether by the use of their naval squadron or by landing troops, to intervene by force to prevent Spain from subduing the insurrection in Cuba, that is war, and Spain must, of necessity, fight, at whatever cost and ultimate loss, or cease to hold up her head as an independent nation either in Europe or America.

But if the view of the United States is to act by mediation in behalf of the insurgents, to induce them to lay down their arms, to make acceptable terms for them, to secure the execution of these terms, to provide for the introduction of good government and the abolition of slavery in officious concert or in formal treaty with Spain, then Spain is ready to meet the United States halfway in such action, to receive, and even invite, their interposition in the affairs of Cuba.

The impression on my mind to this effect was so strong as to half tempt

me to say, Will you then accept our mediation? But I restrained myself, in the doubt whether my present instructions would justify me in thus committing the United States.

I limited myself, therefore, to thanking him cordially for the frankness and friendliness which seemed to inspire what he said, and to assure him that I would lose no time in communicating the same to you, as nearly as possible in his own words, and regretting that no mere written report could do justice to the impressiveness of oral representation.

He then referred briefly to the mere robber character of what there is now of insurrection in Cuba, composed of scattered parties of negroes and mulattoes, without the slightest pretension to any government—directed, so far as they had any general direction, by foreigners, mere desperado adventurers, without right or stake in the country [I interrupted him here to say there were no citizens of the United States among them, to which he assented, and then continued], engaged in mere plunder and incendiarism, not in war—the worst form of that tendency to guerrilla hostilities in the place of regular warfare which the Spaniards had inherited from their remote Celtiberian progenitors, and which, if one of the glories, was not the less one of the national calamities, of Spain.

But of all this, he said, the President's message showed that we in the United States had a clear conception; and he added that neither such bad foreigners as Maximo Gomez in the Managua, nor worse Spaniards, like Miguel Aldama in New York, could ever make of Cuba any better republic than Haiti; and that appeared to be their only purpose—to ruin where they could not rule.

It was impossible for me conscientiously to contradict these appreciations, and therefore I could but listen attentively, and, when he had concluded, take leave, assuring him that he would be informed at once when my expected instructions should arrive from Washington.

The concluding remarks of Mr. Calderon y Collantes suggest to me some considerations, which you will permit me to subjoin by way of commentary.

The Spaniards have great qualities, as many a page in their history demonstrates, but they have also the defects of those qualities; and my dispatches have not been sparing in the exhibition of those defects, such as intolerance of opinion, exaggerated individualism, ill-regulated ambitions, disposition to pronunciamentos, insurrection, civil war, and especially guerrilla warfare.

The Spanish emigrants to America carried all their national qualities and defects with them, as did our own English, Scottish, Irish, and Dutch ancestors; and hence the difference between the colonial career and the political position of British America and those of Spanish America.

And of all Spanish America that which has presented the least balance of good condition is Cuba.

It is curious to read in the ample history of Cuba by Pezuela how at the outset the island was plagued with swarms of mere adventurers in the vain search after gold, the best of whom followed Cortez to Mexico, leaving the worst behind; how it was that in Cuba, as in Santo Domingo, by these adventurers the aboriginal inhabitants were exterminated, while in the rest of Spanish America these have increased in numbers; how for several generations afterwards the most profitable occupation of the settlers was contraband trade, with all its corrupting effects; how the colonial administration presented the spectacle of a chronic three-sided quarrel between the military, the civil, and the

judicial authorities; how, when the insurrection in French Santo Domingo put an end to the cultivation of sugar and coffee there, that cultivation passed to Cuba; how it flourished there, with the consequent development of slavery and the slave trade; how overflowing wealth ensued, and with it came ill-directed education, unwholesome ambitions, and traitorous plots of annexation to the United States, not for the promotion of liberty, but for the security of slavery; how thereupon and therefore came acts and measures of angry repression on the part of Spain, culminating in the present state of hostility between the peninsular Spaniards and the Cuban Spaniards.

If the Cuban emigrants in the United States are a proper sample, as they possibly may be, of the better Cuban Spaniards, what are we to think of those of average or inferior degree?

While those emigrants have made themselves ridiculous in spending their time in quarreling with one another in the newspapers and in public meetings, instead of fighting the common enemy in the field, they have rendered themselves odious by their systematic violation of the law of the land of their asylum, and the acts of fraud and perjury which that implies, and by their frantic hostility to the Government of the United States.

Meanwhile, we see what the insurgents at home are after six years' experience—incapable, as the President so clearly shows, of independence, unworthy even of the concession of belligerence.

If the emigrants in the United States were now in Cuba, if the insurgents in arms were to lay down their arms, could they and the rich sugar planters and merchants of the seaports and of the western part of the island, with or without anterior solution of the slavery question, live in peace together as a republic based on free popular suffrage, which is the only intelligible conception of a republic? To me it seems impossible. To say nothing of Santo Domingo, we may look to the case of Jamaica, where, without any civil war to embitter men against one another, with generously regulated emancipation, with a colonial policy just, nay amicable and even kind, it has been found impossible to maintain the existence of well-ordered society except by the constant exercise of paternal authority on the part of the metropolis.

All which leads me to the conclusion that the United States would have an immense task on their hands in undertaking the pacification of Cuba alone and by hostile force, inferring the necessity not only of a fleet and an army of operations, but also of occupation to keep the peace, but might well contribute efficiently to the result in cooperation with Spain.

I have the honor, etc., C. CUSHING.

Mr. Cushing to Mr. Fish.

No. 779.] LEGATION OF THE UNITED STATES,
Madrid, January 17, 1876.

SIR: The observations imputed to the President and yourself, as reported in my No. 776 of the 15th inst., continue to be the subject of a dropping fire of commentary in the public journals of Madrid, the most notable of which is annexed from the Epoca.

I have the honor to be, etc., C. CUSHING.

[Appendix A, No. 779.—Translation.—Article from La Epoca of January 15, 1876.]

The New York Herald of the 28th attributes to the Secretary of State, Mr. Fish, the following words upon the relations between Spain and the United States:

"There is not a word of truth in the stories relative to difficulties between the United States and Spain; the two countries maintain the best relations, and the slight difficulty originated by the reclamations in Cuba is on the best road toward amicable settlement."

The opinion is also attributed to the President that he considers the independence of the Island of Cuba impossible, and that its annexation to the United States would cause great harm to the country.

We are of the same opinion. The Island of Cuba, independent, would be worth no more than Haiti or Santo Domingo, and its rich products would cease to sustain the market of the United States. Mr. Grant is mistaken, for the adventurers in the manigua no longer obey political ideas of any kind, nor would they accept any form of government save that which exempts them from the penalties which they have merited by the ordinary crimes which led them to mingle in the forces of the rebellion. And as an autonomic state the Island of Cuba can not sustain itself, since should it cease to belong to Spain it would become the patrimony of the negro race. But as no one desires this, the Government of the United States will do better by allowing us to conquer the insurrection, as we shall finally overcome it, raising the production of the Island of Cuba to amounts never before known and instituting there the reforms which may be compatible with justice.

Mr. Fish to Mr. Cushing.

No. 298.] DEPARTMENT OF STATE,
Washington, January 19, 1876.

SIR: Referring to previous correspondence on the Spanish question, I now inclose herewith, for your information, a copy of a dispatch under date of the 18th instant (No. 36)[1] upon the subject from Mr. Boker, the minister of the United States at St. Petersburg.

I am, etc., HAMILTON FISH.

Mr. Fish to Mr. Cushing.

No. 299.] DEPARTMENT OF STATE,
Washington, January 21, 1876.

SIR: Referring to my No. 298 of the 19th instant, transmitting a copy of a dispatch on the Spanish question from Mr. Boker, the minister of the United States at St. Petersburg, I have now to inclose herewith for your further information a copy of another dispatch under date of the 23d ultimo from that gentleman, stating that the Russian Government has consented to make representations to that of Spain upon the question, and that the Russian minister at Madrid has been instructed accordingly.

I am, etc., HAMILTON FISH.

Mr. Cushing to Mr. Fish.

No. 786.] LEGATION OF THE UNITED STATES,
Madrid, January 21, 1876.

SIR: I continue to make for your information such extracts from newspapers as appear to me most worthy of attention.

(1) I remark, first, that whatever inconvenience may be involved in communicating the correspondence to Congress will be fully compen-

[1] See p. 132.

sated by putting an end to the false rumors which fill the newspapers and lead to misconstruction both in the United States and Europe.

(2) The report of a late interview with the minister of state will have served to show you how accessible this Government is to good influences on the part of the United States.

If we make ourselves the instrument, morally or by force, either of the maroon incendiaries in Cuba or of the false Cubans, who, instead of staying at home and taking up arms for their pretended country, run away from it to parade their desertion and their shame in New York, we shall, in my opinion, encounter serious trouble, while otherwise we shall have our own way in all things.

(3) I was impatient at first in view of the nonarrival of ultimate instructions, but have now become reconciled to this in the supposition that before acting definitely you will have desired to feel the pulse not only of the European Governments, but also of Congress.

(4) Don Alfonso's Government will be all-powerful in the Cortes, which is to assemble on the 15th of February; but that circumstance will not, in my opinion, produce any change of policy as regards the United States.

Indeed, the stronger the Government in the Cortes, the better for us; for according to constant experience in Spain, in every previous Cortes, while the Government has been disposed to calmness and conciliation, the opposition breaks out but too frequently into transports of hostility against the United States.

(5) Some of the French and German newspapers, you will see, misled by those of the United States, attribute the policy of our Government to electoral purposes; while the Spaniards, more candid or more keen-sighted, think they find the key to it in the interested clamors of the filibuster party in and out of Congress.

(6) At the same time, in spite of excitations to the contrary, the respectable journals of Madrid are constant in the expression of belief in the peaceful and just professions of the President and the Government of the United States.

I have, etc., C. CUSHING.

[Appendix A, No. 786.—Translation.—Editorial article from La Epoca, Madrid, January 19, 1876.]

The New York papers lately received publish extracts from several journals of Madrid which have commented upon the message of General Grant, manifesting their surprise that these should attribute to him a spirit of hostility against Spain which, in their judgment, he is very far from holding. The desire of the first magistrate of the great American Republic and of his Cabinet is, on the contrary, to maintain the cordial relations which happily exist between the two peoples, avoiding whatever difficulties might compromise those relations for the future. In Madrid, say the New York journals, the signification of the message has not been well understood, for its general tone is conciliatory and friendly.

In this sense we ourselves construed it on examination, and the facts have since come to show the exactness of our appreciations. President Grant has to satisfy the exigencies of a certain group, not very numerous, but excitable in the extreme, which sympathizes with the Cuban insurgents, and whose opposition might run counter to his aspirations to the third Presidency of the Republic; and, nevertheless, on examining that document with due attention, not a single phrase of encouragement for them can be found in it. The hopes of obtaining the declaration of belligerence in favor of the rebels of the Managua are completely dispelled; there is nothing in the message which can be construed as a menace nor inspire fears of the most remote danger, and the idea of European intervention in the affairs of Cuba, vaguely formulated, has had no other object than to silence to a certain extent the exigencies we have mentioned, without the Government of Washington showing much zeal in sustaining the idea. Such a project may be regarded as a failure. It is so, assuredly, after receiving from the Governments of Europe communications

wherein they refer to it with marked indifference and do not show themselves disposed to second it.

The change of attitude which is observable in the North American press reveals the tendency which dominates in the country, openly contrary, not merely to war, but to any solution which would make of independent Cuba a new Santo Domingo. It is very well known there that upon the separation of the Great Antilla from the mother country, it would fall under the brutal dominion of that crowd of bandits and incendiaries who mark their raids by leaving behind them heaps of ruins; and the United States, which keep up such important mercantile transactions with that Spanish province, would be the first to suffer the evil consequences of the separation. The interest of commerce, which prevails in all the acts of the American Government, demands that Cuba should be what it was before the present destructive insurrection, and that its wealth, which has been such a source of profit to the Great Republic, should increase. This can not be obtained without restoring tranquillity under the shadow of the Spanish flag, and it will be obtained, cost what it may, by the patriotic effort of the whole nation, resolved to maintain its integrity and regain its greatness.

Thus, doubtless, is the matter understood by the North American Government and people, whose attitude is day by day more strongly marked in favor of our country. The communications of the minister of foreign affairs in Washington, and the friendly spirit which reigns in the conferences of his representatives in Madrid, remove all fear of future complications, which can only have existed in the imagination of the laborantes and their sympathizers.

[Appendix B, No. 786.—Translation.—Editorial paragraph from La Epoca, Madrid, January 20, 1876

We are informed from Paris, on the 15th, that the correspondence from New York in the English and German press is occupied with the American note addressed to the Powers concerning the question of Cuba.

All are unanimous in roundly denying that the United States entertains any intention, even remote, of intervening directly in Cuba.

The correspondent of the Times supposes that the note has for its cause the impatience to which the prolongation of a struggle which causes serious injuries to commerce gives rise in the United States.

The correspondent of the Frankfort Gazette asserts that the American Chambers will in no case give their approbation to an intervention in Cuba, and conjectures that nothing more than a fresh maneuver of the Grant party is to be seen in this note.

The Paris Journal sums up these comments in a paragraph of its bulletin, deducting as a consequence that the note is contrary to all diplomatic traditions of the Union, since it consults the powers about a question which only interests Spain, Mexico, and England. It adds that the only thing to be seen in it is an attempt on the part of Grant to make profit of this question in favor of his third reelection.

We have already said yesterday that our own news was entirely tranquilizing; that in the Cabinet of the United States the best disposition prevails, and that to this result have contributed the loyal, and at the same time dignified explanations of our Government, as well as the knowledge that the commerce of the United States has much more to gain under the possession of Cuba by Spain than by means of reckless schemes otherwise arising. To such a point does one of our friends in New York carry his assurances that, in a recent letter, he announced to us the possibility that the American Cabinet itself would take upon itself the responsibility of guaranteeing to Spain the possession of her Antillas, joining to this new commercial ties.

Mr. Fish to Mr. Cushing.

No. 301.] DEPARTMENT OF STATE,
Washington, January 25, 1876.

SIR: The German minister, Mr. Schlözer, called to-day, and I give the substance of the conversation which took place between him and myself.

He said that he was instructed by the minister of foreign affairs to express thanks for the friendly communication which was made to the

German Government of the instruction to Mr. Cushing, referring to that of November 5, 1875, No. 266, and to state that they feel the justice of our complaint and appreciate the moderation of our conduct; that German interests suffer in the interruption of commerce resulting from the condition of affairs in Cuba, and that her citizens have also sustained wrongs, but that she does not feel disposed at present to take any decided steps.

I remarked that Mr. von Bülow had given our chargé d'affaires to understand that their minister in Madrid would be instructed to represent to the Spanish Government that in the opinion of Germany the United States was justified in her complaint and in the wish for an early termination of the conflict in Cuba.

Mr. Schlözer's reply was equivocal. He answered: "Oh, yes; but you know in these matters the Governments of Europe like to act in concert."

I answered that this was the object which induced us to communicate with the great powers simultaneously, believing that they would feel, as we understood Mr. von Bülow to have expressed himself, the fairness of our position, and believing that a simultaneous expression to that effect could not fail to exercise a powerful influence in inducing Spain to appreciate the necessity of bringing to a termination a war which had lasted for more than seven years, without any apparent approach to a result, and which was now threatening the destruction of the producing capacity of the island.

He inquired whether I could tell him the course which Great Britain proposed to take.

I answered that I supposed that Great Britain would communicate with Germany if she wished to know the views she had of the matter; that I did not undertake to express them for her, but I believed that she recognized the justice and moderation of our position, and the importance of an early termination of the conflict.

I called attention to the fact that we neither sought nor desired any physical force or pressure, but simply the moral influence of concurrence of opinion as to the protraction of the contest.

He assured me his Government agreed with us, but I could obtain from him no intimation that it was intended to inform Spain that such was the fact.

As this seems to place Germany in a different attitude from that indicated in Mr. von Bülow's conversation with Mr. Fish (as communicated to you in my No. 286), it seems proper to make known to you the substance of the interview.

I am, etc., HAMILTON FISH.

Mr. Cushing to Mr. Fish.

No. 794.] LEGATION OF THE UNITED STATES,
Madrid, January 28, 1876.

SIR: I annex four or five items which appear in the Correspondencia, numbered 1 to 4.

I am not sure what the exact meaning is of Nos. 1 and 2, but transmit them as they stand.

I have, etc., C. CUSHING.

[Appendix A, No. 794.—Translation.—Sundry items from La Correspondencia.]

No. 1.

A telegram from Washington was received last night at the ministry of state denying that the note had been addressed to the Spanish Government, of which the newspapers have spoken, and which was supposed to have been communicated to the other European powers.

No. 2.

[Telegram.]

VIENNA, *January 26.*

The ministry of state has asked confidentially of the American minister at this court a copy of Mr. Fish's circular referring to the affairs of Cuba. The representative of the United States, after reflection, has refused, for which reason it is believed possible, later on, that a new American note will be presented.

No. 3.

From January 1, 1875, up to January 21, 1876, there have been embarked for the army of the island of Cuba 28,445 soldiers in 43 expeditions. This cipher proves all we have said on different occasions with respect to the zeal and activity displayed by the respective departments of the ministry of war, in order to endow the army of Cuba with the forces needed to put down the insurrection.

No. 5.

The Times of the 24th instant, referring to the note of the American minister, Mr. Fish, says:

"We are sure that Lord Derby and the ministers of the other powers, will reply courteously to the invitation of Mr. Fish; but the question of knowing whether we ought to intervene between Spain and her rebellious colony is much less evident. It is not probable we shall do more than give a simple counsel, in case we go so far as to give any, unless it be that our honor and our interests would suffer; for the complaints which have any real foundation are the business of Spain alone.

"Nevertheless, it is possible that the powers may take part in a convention, which, guarding the honor of Spain, shall terminate the question of Cuba."

Mr. Cushing to Mr. Fish.

No. 799.] LEGATION OF THE UNITED STATES,
Madrid, January 31, 1876.

SIR: In continuance of the purpose of transmitting to you from time to time newspaper paragraphs indicative of public opinion respecting, especially, the question of intervention, translation is annexed of an article of La Patria, which is supposed to express views of the minister of gobernacion, Mr. Romero y Robledo, lately married to a daughter of D. Julian Zulueta.

The journals of Madrid abound with discussions of the supposed electoral prominence of the religious question in the United States.

Several of them also are occupied with examination of the condition and fortunes of our Indians, with appreciations to our prejudice, drawn from the book of Mr. Pumpelly.

I have, etc., C. CUSHING.

[Appendix A, No. 799.—Translation.—Extract from La Patria of January 29, 1876.]

* * * * * * *

The English journal (the Times) doubts whether its Government will go so far as to interfere in our affairs in the way the Cabinet of Washington seeks, but at the same time it says that the powers may aid in forming a compromise which may save the honor of Spain while terminating the Cuban question.

This, after all, is no other than a friendly intervention, which reveals the good spirit wherewith the English people is animated with respect to Spain, but we do not know to what extent our Government would conform to the intervention of the powers, provoked by that of Washington, in order to bring about the settlement of the affairs of our country in Cuba—a settlement which pertains solely and exclusively to ourselves.

At any rate, it is needful that the exaggerated pretensions of the North Americans should receive a corrective on the part of our Government, and we doubt not that it will receive it, within the bounds of dignity and decorum befitting a nation which, in the settlement of affairs which are its own, and exclusively its own, can not permit interferences founded in strange captiousnesses and in imaginary dangers and prejudices.

Mr. Cushing to Mr. Fish.

No. 804.] LEGATION OF THE UNITED STATES,
Madrid, February 5, 1876.

SIR: I annex, in translation, extracts of a notable editorial article of the Política respecting the present relations of the United States and Spain.

I have, etc., C. CUSHING.

[Appendix A, No. 804.—Extracts translated.—Leading editorial from La Politica, Madrid, February 4, 1876.]

AMERICAN AFFAIRS.

The notices which the transatlantic cable has brought to us with respect to the political spirit which reigns in the United States with reference to the question of Cuba are too serious to permit of their not being taken up by the Spanish press, the duty of which is to watch over and defend our interests on the other side of the ocean. The field of politics is a vast chess board, where, from the king to the pawn, not a move can be made without affecting in a greater or less degree the situation of all the other pieces. Thus it is that the agitation aroused in the United States with respect to the political affairs of Cuba, which, it would seem, ought merely to be confined to the United States and to Spain, has taken such a turn that to-day all the principal powers of Europe are playing a part in this affair. Can the Spanish press, therefore, remain meanwhile indifferent and silent? We think not.

What is the matter?

The matter is that the Government of the United States, whose President, Mr. Grant, had already announced in his last message another special one on the Cuban policy, has passed to its representatives in Europe a note, to the end that, without leaving a copy of it, it may be read to the European ministers of foreign affairs. The object of the note has doubtless been to enable the Cabinet of Washington to discover indirectly the impression which would be produced by its interference, direct or indirect, in the relations of Spain with her Antillean province; but even though this note may have merely been a pilot balloon to get the drift of European sentiment it has for that reason none the less attracted the attention of political men.

We do not know whether this reserved communication to the European nations will receive anything else than a purely polite and diplomatic welcome, but what is very probable, in our opinion, is that none of them is disposed to accept an active part in an enterprise having for its object to exert upon Spain a pressure which could be interpreted as a minatory act.

We do not doubt that the sensible party of the United States would see with satisfaction the termination of the Cuban conflict, out of respect for the laws of humanity; but who better than that same North American Republic could have prevented the duration of that sanguinary war by simply complying with and causing its subordinates to comply with the laws which prohibit the sending of resources, arms, and munitions to an insurrection born in the bosom of a friendly power? For, if the custom-houses of New York, of Charleston, of Savannah, Mobile, and New Orleans, in fulfillment of existing laws, had detained the filibuster ships laden with arms and

munitions for the insurgents and thus aiding in warfare against a friendly power—if they had prevented these violations of international right—then but a brief time would have passed before the insurrection, which had its origin on the banks of the Yara, had succumbed, without having so much prolonged its existence, or having caused such disasters, or having counted so many victims. And, if this be an evident and palpable fact, how is it that the United States to-day recall the name of humanity, and to what result do the judgments of humanity lead when invoked by the nation which might have arrested the career of the evils which it to-day recognizes?

Nearly eight years have passed by, and the mother country has had not merely to meet the serious difficulties which follow in the train of a reckless insurrection, but it has also had to sustain a hand-to-hand struggle because of the conflicts excited against Spain by permanent elements in the American Union which sympathize with the Cuban insurrection. And when all the combustibles have been accumulated for a conflagration, and the blaze has been kept knowingly stirred up, it is a rare sight to see those who have done all this lamenting the ravages of that fire, shrinking appalled from its horrors, and clamoring before Europe for the rights of humanity.

It is not that we ourselves fail to lament the horrors which, there as elsewhere, are involved in civil war. We have valiantly condemned acts which have taken place in the island, but of which acts we everywhere find like examples, even in the civil war of the United States. We appeal to the families of the Confederate States during the titanic contest between the States of the North and of the South of the American Union to tell us whether we are, or are not, right?

And if, from the point of view of humanity, we do not recognize that the United States have either the right or the opportunity to take the initiative which they have taken in the Cuban question, still less could we concede it to them if they appeal to the resource of supposing that the Cuban war affects their commerce. The North Americans are intelligent men in questions of figures and statistical calculations, and they know that the commercial relations between the United States and Cuba have increased during these last eight years in spite of the war; and, therefore, the excuse that the war affects their commercial interests can not serve for their intervention. There is no need of our reproducing the statistical data which demonstrate the increase of commerce between the Island of Cuba and the United States during the Cuban war, because they are data known to all the world, and which will easily be found by the North American dailies.

What remains besides that which has been set forth to serve as a support to the United States in order to pretend to the direct or indirect intervention which they propose? In our conception, it has for its basis no other thing than the eternal tendency which, from beginning of the century and from one motive or another, has been ever manifested by the partisans of the Monroe doctrine—a policy which served to rend from Mexico the greater part of her territory; a policy which has ever sought to deprive Spain of the brightest jewel of her crown, of the jewel which symbolizes a world of memories for the nation which discovered America.

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The notes of Mr. Henry Clay to Mr. Everett in 1825, to the end that Spain should conclude the wars of Mexico and Colombia for the sake of humanity; subsequently those of Mr. Buchanan to Mr. Saunders, minister in Madrid, for the purchase of Cuba for one hundred millions of dollars, recommending him to get it as cheap as possible; the mission of Mr. Soulé; the Ostende conference; the refusal of the United States to subscribe the compromise with England and France to guarantee to Spain the possession of the Island of Cuba, and a thousand other antecedents which we might evoke, if the scope of this article permitted us to do so, are the key to explain this stroke of humanity with which the United States present themselves before Europe, soliciting its moral cooperation to end the war in Cuba.

The Government must understand it thus, as will Mr. Canovas del Costillo and Mr. Calderon y Collantes, both eminent statesmen of Spain, and profoundly acquainted with the North American policy, and they will doubtless have presented before the courts of Europe the true aspect of the Cuban question; and we do not entertain the least doubt of the support which our Government will receive, sustaining its dignity and its rights.

But, at any rate, what is undoubtedly indispensable as a measure of salvation is that this insensate insurrection in Cuba, which gives rise to so many conflicts, be terminated as soon as possible. The Carlist war is already dominated, and if the 30,000 soldiers who have recently crossed the Atlantic be not enough to pacify the island let there be speedily sent as many more as may be necessary in order to obtain that object, and let the reforms be made which ought to be introduced for the purpose of bettering the financial state of the island and rendering the operations of the campaign more effective.

Mr. Fish to Mr. Cushing.

No. 311.] DEPARTMENT OF STATE,
Washington, February 9, 1876.

SIR: Your dispatch No. 779, of the 17th ultimo, has been received. It relates to the continued comments of the public journals in reference to certain observations on Cuba imputed to the President and Secretary of State, and incloses an article from La Epoca in regard thereto.

In reply I have to state that while the remarks attributed to the President and Secretary of State in the article from La Epoca above referred to may not be very far from what they might be inclined to have said, newspaper reports of interviews or of attributed opinions or speeches are not to be relied upon. In this country their general value, or rather want of value, is understood.

I am, etc., HAMILTON FISH.

Mr. Cushing to Mr. Fish.

No. 828.] LEGATION OF THE UNITED STATES,
Madrid, February 14, 1876.

SIR: In my interview with the minister of state of the 12th, the conversation passed at length naturally to the question of our intervention in Cuba.

I observe, by way of preface, that the intervention of the great powers in Turkey is, of course, the subject of universal interest in Madrid, the more so as the Spaniards regard it in the light of its analogies with the suggested possible intervention of the United States in the affairs of Cuba.

I said to Mr. Calderon y Collantes that, approaching, as now, the conclusion of the various special questions at issue between the two Governments, it might be my duty at an early day to communicate with him on the larger and more purely political question of the general state of Cuba.

He replied that he had already addressed to Mr. Mantilla a "memorandum" setting forth the views of the King's Government on the subject, in opposition to the suggested intervention, with instructions to read the same to you, or, if you desired, to deliver to you a copy; that the ministers of Spain at other courts had received copies for the purpose of reading the same to the respective Governments, as in the case of your note to me of the 5th of November, and that he trusted this document would satisfy you of the inconvenience of the idea of intervention.

Parenthetically, let me note that in the newspapers of to-day appears a telegram from Paris in the following terms:

> The Spanish memorandum on the subject of Cuba has been received in several courts of Europe. Various periodicals give extracts therefrom. It is written skillfully, and has produced an excellent impression.

Returning to Mr. Calderon y Collantes, he said there was no difficulty on the part of the Spanish Government in the introduction of all practicable reforms in the organization or administration of Cuba, including emancipation, which it was resolved to do, with or without any friendly suggestion on the part of the United States; that, on the con-

trary, the whole difficulty lies with the rebels and the impracticable Cuban emigrants in Paris and New York, who obstinately repel even the idea of autonomic institutions in Cuba like those of Canada and other colonies of Great Britain, and thus leave to Spain no possible means of action but force.

He concluded from these premises that it was not Spain to whom pressure needed to be applied in order to put an end to the present calamatous state of things, but the rebels in arms and their sympathizers and pretended directors abroad; that while in the matter of Turkey the mediating allies in taking the step of suggesting reforms in the administration of Bosnia and Herzegovina admitted the consequent duty of taking a second step, that of exerting their influence to induce the rebels to cease from rebellion, the United States appeared to stop at the first step, that of assuming a menacing attitude toward Spain.

I replied that he might rest assured of the truth and sincerity of the repeated assurances of my Government, repelling all suggestion of hostile purpose, avowing, on the contrary, the most friendly ones, and anxious only to see the end of a warfare of desolation and bloodshed in a possession contiguous to our shores, and socially and commercially in the closest relation with us, so as to render the actual state of things intolerable to us, and that the subject would be reverted to by me again at an early day in a more deliberate manner.

I may here observe in passing that the concentration of our ships of war at Port Royal impresses the Spaniards as a menace against Spain. They say: We have not made any naval demonstrations in the waters of the Antilles; we have done nothing to call for defensive preparations on the part of the United States, and we are unable to account for these naval preparations of theirs, unless intended for the invasion of Cuba in aid of the insurgents, in imitation of the action of Navarino.

Their suspicions in this respect stand greatly in the way of mere friendly diplomatic negotiation in the sense of mediation.

Now, as to the naked question of intervention or mediation in Cuba, the only foreign minister here who speaks to me in a helpful spirit is Mr. Layard. We have an appointment for some day this week to consider and determine how far his instructions enable him to support me; in other words, up to what point in this direction the United States may count on the support of Great Britain.

I have no information on this point later than General Schenck's report by telegraph of December 2, on the subject of his interview of that date with Lord Derby, wherein reservations of moment are made by the latter, not only as to the object and aim of intercession, but also as to the definite conclusions of the British Government.

I may remark that we stand in no need of the good offices of other Governments in the matter of our private griefs; on the contrary, my colleagues think that in this respect we are more favored than they by this Government.

The critical question is, How far any of them will go with us in the direction of intervention, if that be repelled by Spain.

As to this, it will be in my power to write to you in the course of a few days.

I have, etc., C. CUSHING.

Mr. Fish to Mr. Cushing.

No. 315.] DEPARTMENT OF STATE,
Washington, February 16, 1876.

SIR: Referring to previous correspondence on the subject, I have now to inclose herewith, for your information, an extract of a dispatch from General Schenck, at London, a copy of two dispatches from Mr. Davis, at Berlin, and of one from Mr. Hitt, the chargé d'affaires ad interim, at Paris, all of which relate to the Spanish question.

I am, etc.,

HAMILTON FISH.

Inclosures: Mr. Schenck to Mr. Fish, January 28, 1876, No. 862 (extract); Mr. Davis to Mr. Fish, January 22, 1876 (No. 249); Same to same, January 26, 1876 (No. 254); Mr. Hitt to Mr. Fish, January 23, 1876, No. 1279.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *February 18, 1876.*

FISH, *Secretary, Washington:*

Two more of the three remaining claims settled.

Question of judicial procedure goes on without controversy.

I begin to think mediatory arrangements between the two Governments by themselves, without aid from others, may not be impossible.

I need indication of bases.

CUSHING.

Mr. Cushing to Mr. Fish.

No. 835.] LEGATION OF THE UNITED STATES,
Madrid, February 18, 1876.

SIR: Mr. Layard has made me acquainted with the negotiations for the pacification of Cuba in 1870, undertaken by him at the instance of Mr. Moret, in Madrid, and continued in concert with the United States, at Washington, on the basis of the submission of the insurgents, emancipation, radical reforms of colonial administration, and general amnesty, with exception of such compromised insurgent chiefs as should elect to leave the island in ships of war provided by the United States.

He seems to think this plan a feasible one in itself, but that neither that nor any other project of mediation would be seasonable now, nor until the Spanish Government shall have gone through with its present experimental winter campaign in Cuba.

Taking as a point of departure the conclusive exhibition in the President's message of the present unfitness of the insurgents in Cuba for independence, or even for a concession of belligerence, and also the explicit disavowal on the part of our Government of any wish or purpose to acquire Cuba—on these premises, the point, which most labors in the minds of the Spaniards, is the question as to the precise form of intervention contemplated by the United States.

In this connection there is much comment on the line of action pursued by the intervening powers in the matter of Bosnia and Herzegovina,

as being the reverse of that pursued by the same powers in the matter of Greece. Seeing that in the latter case the demonstration of force was against Turkey and in favor of her rebels; while in the former, it is against the rebels and in favor of Turkey, as manifested by the concentration of Austrian troops in Croatia and of a fleet of the allies off Ragusa, in the avowed purpose of compelling the impenitent and persistent insurgents to accept the terms of reform arranged at Constantinople.

I have, etc., C. CUSHING.

Mr. Cushing to Mr. Fish.

No. 841.] LEGATION OF THE UNITED STATES,
Madrid, February 19, 1876.

SIR: I have received from the minister of state a copy of the memorandum addressed by him to the representatives of Spain in other countries, including the United States, on the subject of Cuba.

Copies have also been sent by him to the other foreign ministers in Madrid.

He informs me that Mr. Mantilla has been instructed to deliver to you a copy of the memorandum, which relieves me of the necessity of sending to you the copy in the possession of the legation.

I have, etc.

C. CUSHING.

Memorandum by Sr. Ferndo. Calderon y Collantes given by Antonio Mantilla to Mr. Fish, Secretary of State.

MINISTRY OF STATE, POLITICAL SECTION,
Madrid, February 3, 1876.

MOST EXCELLENT SIR: The great interest which Spain feels in the suppression of the insurrection which broke out years ago in the Island of Cuba renders it the imperative duty of Spain to rectify all the errors to which the rebels have undertaken to give currency, by rendering perfectly evident, by means of irrecusable facts, the real animus of that insurrection to-day, laying aside the consideration of its origin; by showing, moreover, what would be the consequences of any settlement of the question other than the complete triumph (which will be gained) of Spain over the insurgents; the real effect which that state of things has had and continues to have upon the wealth of the island, the commerce of the world, and, finally, the resources upon which Spain relies for the complete suppression of the insurrection, as, notwithstanding the civil war which has unfortunately raged on its soil for years, and the notorious contretemps which have been experienced of late years, and which have so greatly weakened the action of the Governments, it has not only succeeded in repressing it, but also in constantly diminishing its importance.

The first cry of insurrection was raised at Yara, an unimportant town situated in the eastern department of the island, on the 11th day of October, 1868, immediately after the receipt of the news of the revolution begun at Cadiz on the 17th of September, and consummated at Madrid on the 29th of the same month. The leaders of the rebellion availed themselves of the preparations which they had doubtless previously made, and of the favorable circumstance that the Government had not more than 7,500 troops all told on the island at the time, and that, too, for a territory peopled by 1,400,000 inhabitants, and having an area of 12,000 square miles, including the keys and the adjacent islands. The flag of the independence of the island was not raised at the outset, much less that of annexation to any other State. The only cries were, "Hurrah for Prim!" that general being there regarded as the leader of the Spanish revolution, and "Hurrah for the revolution!" Thus it was that many joined in the insurrection who, while really loving Spain, thought that the only object had in view was a political change, and, subsequently repenting when they became aware of the tendency which the enemies of the country were seeking to give to the movement, voluntarily took up arms against it. It may be admitted, however, in examining this question with the constant good faith and sincerity with which the Government of Her Majesty proposes to treat it in this memorandum, very soon after the outbreak of the revolution, it assumed a character of opposition to the domination of Spain, because such was the purpose of all who obtained control of the rebel forces and who directed their movements as leaders.

It can not be denied that the movement for secession subsequently carried away a part—certainly not the greater or the more important—of the white population of the island, especially the unreflecting and rash youth, who, misled by their own inexperience, imagined that it was possible to establish an independent and republican government in a country in which the African race formed by far the major portion of the population, and was still in a state of slavery. This secessionistic tendency was disguised under the apparent desire of securing reforms in the government of the island. It soon became apparent, however, that this was only a pretext. Reforms and franchises were granted which have never been excelled or even equaled by any nation, and the rights were introduced there which are proclaimed by the democracy of both Europe and America, which rights had never been enjoyed even by the Spaniards themselves. Far from showing any gratitude for such ample and important concessions, the rebels took advantage of them to foment the insurrection, which, far from diminishing, increased in extent and intensity. The struggle was still carried on, however, with a certain kind of regularity, and both parties respected the property which has since been so barbarously destroyed by the new insurgent leaders and soldiers.

All this is now changed, and of the leaders of the secession movement, Cespedes, the Agramontes, Cavada, Donato, Marmol, Castilla, Mola, the Betancourts, the Agüeros, Jesus del Sol, Bembeta, Salomé Hernandez, Marcono, Inclan, Goicuria, Rosas, and others, all of whom were Cubans, and really opposed to Spain, not one is now living. Of those who have succeeded them in the command not a single one is a Cuban. Máximo Gómez, the principal one, and Modesto Diaz, the next in importance, are Dominicans; Rulof is a Pole; the person known by the nickname of "el Inglesito" is an Englishman; and the rest, who are now few in number on account of the great diminution of the insurgent forces, are adventurers from various countries, without antecedents, and having no interest in the island. The same may be said of almost all the insurgents. Their forces now consist of negroes, mulattoes, Chinese, deserters from the battalions which were formed provisionally in Santo Domingo during our brief rule there, and a few independent bodies which were formed in Spain during the most disorderly period of the revolution, and which were largely composed of the most turbulent elements of the country, and it may be confidently asserted that there are to-day not more than eight hundred white natives of Cuba with arms in their hands in the insurgent ranks.

The consequence of this radical change in the elements of the insurrection is that what could be considered in the beginning as a struggle for independence has now assumed a character of ferocity and become a war of races and of devastation, which it was not before. Wherever a band of insurgents make their appearance, they steal and plunder everything that they can lay their hands on and set fire to the crops and buildings. The acts of this kind which have been committed there are all their work; not a single instance can be pointed to in which such a deed has been committed by our troops. The reason is that the insurgents carry on a savage warfare, without feeling any affection for the soil on which they tread, while our troops defend it as a possession of the mother country. It is easy to estimate what would be the consequences, not only for Spain but for the world at large, of the triumph (which is fortunately quite impossible) of such an insurrection. If such a triumph were once gained through the efforts of the negroes, mulattoes, and adventurers, the power would be in their hands; they would establish such a government as their capacity would permit, and, far from being the commencement of an era of peace for the island and of security for the interests of Europe and America, it would be the utter ruin of them all and the end of all civilization.

It would be a very great error to suppose that the Cuban emigrants in the United States, who only send good wishes and advice to the insurgents, taking good care to keep out of harm's way themselves, would be able to constitute a government. Those among them who were brave enough to face death on the battlefield have almost all either fallen or surrendered; and in every civil contest the party which triumphs through its own efforts, and by shedding its own blood, has a right to the chief authority, takes possession of it, and does not give it up to or divide it with those who have done nothing. It is evidently therefore to the interests of all Europe and America, and even of the white race in Cuba, not to encourage, either directly or indirectly, as they might sometimes do, against their own will, the insurrection in Cuba; it is to their interest that the insurrection should result in the triumph of Spain, which will be at once the triumph of law and civilization, and the only one that can offer solid guarantees to all interests and preserve the regular relations which should be maintained by civilized nations with all countries. Any other solution would be not only ineffective, but contrary to the true and well-understood interests of humanity and civilization. Even if the Government of Spain could, with a proper regard for its own dignity, enter into any other kind of arrangement, it would have no one to treat with, for no one could expect it to do so with the half-savage negroes and mulattoes, or with the Chinese, Dominicans, deserters, and adventurers, who are the only ones who hold the real power of the insurrection. *The triumph of Spain would* soon be followed by the judicious but total abolition

of slavery, which still exists in Cuba in spite of the sincere wishes of His Majesty's Government; it would insure the administrative reforms which have been offered to the island; it would open the door to the representation of the inhabitants in the Congress of Deputies; and finally, it would speedily bring to pass what will in vain be sought by other means.

Guaranties of the sincerity of these assertions, and of the firmness and resolution with which Spain would make them good, are to be found not only in the measures which have already been carried out in Puerto Rico, but also in those which, notwithstanding the insurrection, have been adopted for Cuba, by virtue of which more than one-third of those persons who were held as slaves have obtained their freedom. In Puerto Rico, which has remained faithful to the mother country, and where perfect order has prevailed, slavery ceased to exist several years ago. Those who were slaves are now freemen, and as such they make contracts with their former masters, and the most perfect harmony prevails between the two classes. That island will send its freely-elected senators and deputies to the next Cortes to represent it and to defend the rights and interests of that important province, which now differs in no respect from the other provinces of Spain. All this would have been accomplished in Cuba had it not been for this unjustifiable insurrection, which is a disgrace to civilization, and all will be established there when peace shall have been reestablished. The Government of His Majesty has made every effort to bring about this result, and there is no sacrifice that it has not made and is not willing to make in order to secure it.

In the midst of a formidable civil war, in which liberty and the conquests of modern civilization are hazarded, it has sent since the accession of His Majesty to the throne—that is to say, in one year—28,445 soldiers of all kinds, who would have been very serviceable to it could they have been used against the Carlist forces. When General Jovellar was asked for by public opinion as governor-general of the great Antilla, on account of the excellent record which he had left there before, His Majesty's Government did not hesitate to let him go, although it had for some time been intending to give him another important command in the peninsula; and if, as there is every reason to expect, the civil war is soon brought to an end in Spain, a new army will at once be sent to Cuba, which will speedily give the deathblow to the already expiring insurrection. Even without this His Majesty's Government has sufficient forces in the island to secure this result, although of course not so speedily. We have the following land and naval forces there, and I do not fear that the correctness of this list will be disputed:

Forty-five vessels of all classes, with a nominal force of 4,770 horses, 135 cannon, and 2,426 seamen; 55 battalions, 6 regiments of cavalry, 2 of artillery, 1 of light field troops, 1 company of naval mechanics, 3 regiments of civil guardsmen, 1 sanitary brigade, 1 battalion of engineers, 33 companies of skirmishers, 2 squadrons of dragoons, and 1 transport brigade, making altogether a total of 273 chiefs, 3,054 officers, 68,115 soldiers, 8,478 horses, 462 mules, and 42 pieces. Since the foregoing enumeration was made, moreover, 10,370 men have embarked for the island.

There are also the volunteer bodies, consisting of natives of the Peninsula and Cubans, amounting to upward of fifty thousand men. These last figures are official and irrecusable, and show what is the true spirit of the island and its adhesion to the mother country; for while the Cubans who are fighting for the insurrection are less than one thousand in number, those who have voluntarily taken up arms against it number more than forty thousand. There is one fact which may seem incomprehensible to those who have not carefully considered the matter and who are not familiar with the nature of the war in Cuba and the topographical characteristics of the territory in which it is carried on. I refer to the duration of the contest in spite of the disparity existing between the forces of the contending parties; and yet this fact is susceptible of an easy explanation, and numerous analogous instances in the history of nations may be adduced. For the very reason that the Cuban rebels are, for the most part, negroes and mulattoes, they do not experience the ordinary necessities of civilization. They are able to live in the jungles and deserts of the island, and thence fall upon estates and other property like birds of prey, pillaging and applying the torch of the incendiary. They live on the fruits of the country, such as the plaintain and others which grow spontaneously in that fertile soil. Salt, and hogs and other animals are so numerous that they are everywhere met with, and serve as food.

A single fact will suffice to convince anyone of the strength of this element as an aid to the insurrection. The Baracoa district, having an extent of 90 miles, had but 42 inhabitants, while there was about the same number in Las Tunas and the territory which separates the Mayari district from Guantánamo. The average number of inhabitants to the square geographical league throughout the island is 350. It is not, therefore, to be be wondered at that the insurgents should be able to sustain themselves as nomadic tribes in a country of such a character—uncultivated, almost a wilderness, extremely broken and mountainous, and covered with immense forests which can not even be set on fire by reason of their constant and extraordinary humidity. Thus it is that they have never been able to establish even the shadow

of a government. If the insurgents were regular troops and carried on a civilized warfare, the contest would long since have been ended by two or three battles. The matter, however, becomes one of much greater difficulty when they avoid all fighting save from an ambuscade, and run and hide when they see our troops, in order to meet again in their lurking places when the danger is past.

It is thus seen why it has never been possible to entirely destroy the so-called palenques, or bands of fugitive negroes, who have fled from the estates, and who seek refuge in the aforesaid Baracoa district. Even when the island was in a state of profound peace, neither the battues of the inhabitants of the towns nor the pursuit of our troops could accomplish this.

Instances of the long duration of wars of this kind are neither new nor rare. To causes similar to those mentioned was due the fact that the United States, notwithstanding their immense resources and the enormous disparity which existed between the forces of the combatants, required more than double the time that the insurrection has lasted in Cuba to suppress the one in Florida. France too, with all her power, was many years in subduing the rebel tribes of Algeria; and scarcely is there a nation in the world that does not furnish similar instances. The effects of the insurrection, although deplorable, as the effects of an insurrection always are, have not sensibly diminished the wealth of the island; this is due to the fact that the insurgents have not been able to burn the many and rich estates of the western department, which is the most wealthy of all, both in point of population and production, as may be readily seen by glancing at the map of Cuba which accompanies this memorandum, and as is proved beyond all doubt by the following official and irrecusable data:

In the western department there were and still are—for, far from diminishing, their number has increased during the war—1,070 sugar estates, while in the central department there were but 102, and in the eastern 200. The quantity of sugar produced in the first-named department amounted to 500,000,000 kilograms, which quantity has also been increased, while that of the second only amounted to 17,000,000, and that of the third to 35,250,000 kilograms. The quantity of tobacco produced in the western department is 44,000 quintals, in the central department only 5,500, and in the eastern 252,000. It must be remembered that in the territory comprised between Pinar del Rio and Guanajay, in the first of those departments, the exquisite tobacco known as that of La Vuelta de Abajo is exclusively produced. The price of this tobacco is constantly increasing, and is much higher than that produced in the eastern department, which is a second-class article. The quantity of coffee produced in the western department amounts to 3,750,000 kilograms, that of the central department to 3,750, and that of the eastern to 5,000,000. Finally, the value of the cattle of all kinds in the western department is 2,000,000 pesetas, or $4,000,000; in the central and eastern departments, $1,000,000 each.

It is therefore seen that the real wealth and the bulk of the population of the Island of Cuba are in the western department, which has scarcely suffered at all from the insurrection, and which, for the most part, has remained perfectly tranquil. But it is to be observed that the majority of the estates in the eastern department, situated near Santiago de Cuba and other towns, still remain unharmed, because, having been protected by our troops, it was impossible for the rebels to burn them, and the exportation of their products still goes on with the utmost regularity, because the railroad by which they are sent is held by our army, as is likewise the railway which connects Puerto Principe with the port of Nuevitas.

For these reasons and because the insurgents do not hold a single port in the whole island, foreign commerce, instead of suffering any diminuation, has greatly increased since the outbreak of the insurrection, as is shown by the following statistical data, also official. This fact is due to the much greater production of the western department and to the increase in the value of its products. The amount of the receipts from customs in Cuba during the years stated is here given as follows:

Years.	Import duties.	Export duties.	Other duties.	Total receipts.
				Reals.
1865				240, 881, 160
1866				225, 185, 180
1867				155, 426, 850
1868				146, 697, 190
1869				196, 776, 400
1870				264, 066, 090
1871				338, 175, 260
1872				377, 330, 140
1873	205, 835, 210	83, 457, 660	179, 082, 700	468, 375, 570
1874	200, 792, 830	75, 930, 660	166, 825, 220	443, 548, 710
1875	78, 502, 160	70, 220, 490	58, 241, 860	206, 964, 510

NOTE.—The receipts for 1875 are only for the first six months.

These figures furnish the best evidence that the general commerce of the world with the Island of Cuba has in no wise suffered, but that it has, on the contrary, increased since the insurrection began and during its prevalence. The greatest increase is observed in the trade of the island with the United States, with which country its commercial transactions are much more extensive than with any other. According to newspapers published in the United States, which keep aloof from politics and busy themselves exclusively with watching the progress and development of industry and commerce in all parts of the world, the commerce between the two countries has increased by more than one-third since the outbreak of the Cuban insurrection. Such testimony can be regarded with suspicion by no one.

It is true that while commerce in general has not suffered, some foreigners residing in Cuba have sustained serious losses. His Majesty's Government, however, which deeply laments this, has always done justice to all claims that have been presented to it, amply indemnifying the losers for the injuries suffered by them; and this is acknowledged by all foreign Governments in their high impartiality. The Government of Spain, with equal good faith, admits that the taxes which it has been necessary to impose in consequence of the insurrection are burdensome. Even in this respect, however, the Government of His Majesty will not only scrupulously observe its treaties with other nations, but it is conscientiously seeking the best means of lightening these burdens. In consequence of the insurrection, moreover, the property of various foreigners, real estate owners, and manufacturers in the island was embargoed, but these measures, which have never been approved by the present Government, will be immediately annulled, and all the embargoes which have been ordered as a war measure will be raised. To this effect the most positive instructions have been given to General Jovellar, the new Governor-General, which he will carry out with the good faith and energy which are characteristic of him in the cases of those who are really citizens of foreign countries.

With this statement of facts, your excellency will be able, in view of your experience and well-known talent, to enlighten the opinion of the country to whose Government you are accredited on the interesting subject which I have been discussing, and successfully to refute the misstatements which the filibusters have sought to circulate everywhere. Although this memorandum is designed only for your own information and guidance, you may read it to the minister of foreign affairs of the United States, and give him a copy of it, confidentially, if he desires it.

God guard, etc.

FERNDO. CALDERON Y COLLANTES.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *February 21, 1876.*

FISH, *Secretary, Washington:*

My last telegram seems not to have been understood. I repeat, in different words.

I see prospect of possibility of mediatory arrangements if you can answer for the desperate men of the Cuban Junta, enemies of Spain, but worse enemies of the United States.

I need instructions as to reasonable bases of such possible arrangement. See private letter of this date.

CUSHING, *Minister.*

Mr. Cushing to Mr. Fish.

No. 849.] LEGATION OF THE UNITED STATES,
Madrid, February 21, 1876.

SIR: It surprised me exceedingly to learn by your No. 288 that the idea had been conceived in London and transmitted thence to Washington of any delay on my part of action on your No. 266.

What occurred in this respect of erroneously supposed delay will be apparent on comparing my two dispatches, Nos. 692 and 703, in the light of the following explanations:

On the day of receiving your telegraphic instructions of November

27—that is, November 28—Mr. Calderon y Collantes and myself met at dinner at the palace.

I availed myself of that opportunity to request an interview at the earliest possible opportunity, which was fixed by Mr. Calderon y Collantes for the 30th, when copy of your note was delivered to him.

It was impossible for us to discuss your note then, because he is not sufficiently acquainted with English to have read it intelligently; nor, if he had been, was it desirable that he should have spoken on the hasty impressions of the moment.

My apprehension was lest some such hasty and ill-considered appreciation of your note should elicit expressions fatal to the continuance of peaceful relations. On reading or hearing read that note a minister might, if forced to pronounce on the moment, repel intervention; none certainly would invite or accept it, without consulting his colleagues and the King.

I therefore requested him to receive me again so soon as he should be able to have the note translated and to read and reflect upon it, and not to come to any conclusion on the subject until after such second interview, which was fixed for the 4th of December.

I regarded this arrangement as the best possible for us, nay, as the only one involving any probability of advantage.

Now, that necessary pause of three days is the delay of which Lord Derby speaks.

I think the use, or abuse, rather, made of it in London is very suggestive and significant.

Lord Derby, as reported by General Schenck, began by suggesting postponement of definite action in express words. He then proceeds to repel, in various forms of expression, the idea of any pressure—that is, intervention. He concluded with vague expression of "good offices."

Has he ever communicated to you the definite purpose, communication—and even conception—of which he expressly postponed?

I do not know. I presume not; or that if he has, it is not of a nature to serve us here, for if it were, you would have instructed me on the subject.

I do know that he has instructed Mr. Layard that it would be unseasonable and premature to think even of mediation until after Spain shall have made further efforts unsuccessfully to suppress by her own force the insurrection in Cuba.

I have great esteem and respect for Mr. Layard. We work together very well on specific questions of common concernment, such as Burriel and the procedure question. But he has his own official cares, which are sufficiently grave; more private claims than we, and two troublesome treaty questions, while we have but one. It is quite natural and proper that he should look primarily to the interests of his own Government.

You suggest further, in your No. 288, that the interview of the 4th of December "appears to have been confined to our particular griefs, and no allusion being made to the general question of the condition of Cuba as distinguished therefrom."

I do not so understand it. On recurring to the full report of that interview, in my No. 703, you will perceive that every word uttered by me was on that "general question" and the consequent complication. I said nothing of our "private griefs." It was Mr. Calderon y Collantes who introduced and dwelt upon that point, evidently evading the general question.

Was it convenient for me then and there to push him on the question

of intervention? I thought not. The first great object of diplomatic tactics had been attained—that of avoiding rupture and preparing the ground for the continuance of negotiation.

Next, as to intervention. I supposed, erroneously it may be, that no pressure in that direction was to be undertaken by me in the first instance until it should be known whether we were to be supported or opposed by the powers. Why else invoke their moral support?

I knew on the 4th of December what Lord Derby had said, and to my mind it was anything but encouraging; and the result has justified that impression.

But the other powers had not then spoken, nor have they to this day spoken at Madrid in any sense of encouragement to us.

For instance, the Austrian minister is instructed against us; the German minister, from which quarter something might have been expected, declares that he has received no instructions on the general question (he is careful to remind me of this when we converse on the procedure question); and the British minister, as we have seen, is instructed that it is not yet time to mention even mediation to Spain.

Of course, it is impossible to force any of my colleagues to speak on the general subject; and they are all reserved and reticent regarding it, except when they are adverse.

It is my duty to tell you the truth in this respect, and the truth is that no foreign minister here is prepared to back us in saying to Spain: You must close up the war in Cuba immediately, or we will intervene to force a conclusion in our own way.

The question of intercession or mediation is different. Lord Derby despairs on that point; I do not.

The essential premises of mediation are reciprocal confidence and good will, with mutual interests.

The interests of Spain and of the United States in Cuba are identical. At present we derive great net benefits from it; she, none. The imminent destruction of its productiveness would be alike disastrous to her and to us.

She is willing enough to confide in us if we will let her. The proof of that is to be found not in profession (although that we have), but in the analysis of the diplomatic relations of Spain with other powers, contained in previous dispatches. In fine, whatever causes of grief or jealousy she has against us, she has greater against others. Nevertheless, she is now anxious and suspicious with regard to the United States. She knows that thousands of bad Spaniards (called Cubans), having a holy horror of the smell of gunpowder, have fled to "snug harbor" in New York, Key West, and New Orleans, have been dedicating themselves there for years, by distribution of bonds, by speeches, newspapers, solicitations, exaggerated claims, violations of law, and in every other possible way, to the task of embroiling the two Governments in war, and are the efficient authors of all our troubles with her, directly or indirectly, including the tragedy of the *Virginius*.

I dread emigrant rebels. How fatal were the French emigrés to Prussia in the early years of the French Revolution! How frequently the Jacobites involved France in fruitless hostility with England! How the refugee Poles lured Napoleon I to his destruction by Russia, and refugee Mexicans Napoleon III to the commencement of his destruction in America! I do not yet forget the picture of the disastrous intrigues of the rebel emigrants of the Greek Republics, more prejudicial to their friends than to their enemies, as drawn by the masterly hand of Thucidydes, or of those of the Italian Republics, so graphically described by Guicciardini and Machiavelli.

God forbid that these dishonored men, who prate of the independence of Cuba, without manliness or courage to fight for it, preferring the safer occupation of trading in bogus bonds and calumniating the President and yourself, should succeed in making our country the instrument of their rancorous hatred of their own country, Spain.

In this connection, be it remembered that the President's message asserts the absolute nonexistence in Cuba at the present time of the essential elements of an independent state, and thus proclaims this fact to the world.

Then, Spain is told every day, by leading newspapers of the United States, that the objects of our naval preparations is to force the hand of Congress and of the people by producing some casus belli for electoral purposes; and although nobody really believes what newspapers say, yet they have their effect in the propagation of mischievous irritations and dangerous suspicions, as so well exposed in the late remarkable speech of Prince Bismarck in the German Reichsrath.

I meet all these things as well as I may by pointing to the kindly assurances contained in your note of November 5, in the President's message, and in sundry special dispatches, such as your No. 281, notwithstanding their being dispatches of complaint against acts or omissions of the Spanish Government.

But the obstacles which thus far it has been impossible for me to get over are in the insolent assumption of the knots of Spanish traitors in New York and Paris, who presume not only to dictate to Spain, but also to the United States, and in the impracticable character of the Dominican chiefs of the insurgents in Cuba.

If you can answer for them, there is hope for peaceful and harmonious action between the two nations, to the end of peace, emancipation, and good government in Cuba, by the mediation of the United States, with or without the aid of Great Britain or Germany.

As for these European powers, suffer me to say, "Timeo Danaos et dona ferentes."

I have, etc., C. CUSHING.

Mr. Cushing to Mr. Fish.

No. 855.] LEGATION OF THE UNITED STATES,
Madrid, February 28, 1876.

SIR: My No. 853, as being written for the special purpose of replying to the inquiry propounded in your No. 301 on the subject of the course followed here by Germany in the matter of our relations to Cuba, touched but incidentally on that of Russia.

On reflection, it seems to me convenient to be more explicit on this point.

The Russian minister here, Mr. Koudriaffsky, is in very infirm health and goes but little into society. I rarely have opportunity of meeting him except in special calls, given or received. On such occasions we talk together very cordially and freely. His intelligence and other qualities entitle him to much consideration. His relations to men and things you may infer from the fact that, for so many years, Russia has kept aloof from Spain, even under Queen Isabel, that she paid a pension to Don Carlos, and that she only changed her line of policy in these respects on the accession of Don Alfonso.

Your dispatch No. 298 of the 19th of January, communicating the tenor of the interview between Mr. Boker and Prince Gortchakoff, arrived here on the 9th instant.

The first time of my meeting the Russian minister thereafter was at the ministry of state, when he was suffering so much that, so far from attempting to speak to him on business, I could but voluntarily yield to him my turn, in order that he might be able as soon as possible to return to his own house, suggesting my intention to call on him at an early day when he should be in condition for conversation.

Subsequently he left his card with intimation that he should be glad to see me, and I called accordingly.

I found him very feeble, dozing in his armchair by the fire.

After a little miscellaneous conversation, I introduced the subject of our difficulties with Spain.

He said that he had supposed that the Spanish Government had satisfied all our claims, but that it seemed we had since presented some new ones.

I replied that we had not presented any claims, old or new, other than such as were comprehended in principle in previous general reclamations; but that a much more serious question remained pending, that of the unsuppressed insurrection in Cuba, which imposed on us embarrassments of the same nature as those which Russia and Austria suffered from the troubles in Turkey; and that I had hoped his Government would deem it advisable to make such representations to the Spanish Government as might hasten the peaceful settlement which the United States had in view (purposely employing, as near as possible, the introductory language of Mr. Boker in his interview with Prince Gortchakoff).

Mr. Koudriaffsky replied that he had not received instructions to that effect; that he had information of the interview of Mr. Boker with Prince Gortchakoff, and understood it had for its subject the reclamations of the United States, and no more; that he had heard of your note of November 5, but had never seen it, nor, so far as he knew, had his Government.

I then explained to him that the note consisted of two parts, one enumerating our unsatisfied reclamations, and the other setting forth the exigency of a speedy conclusion of the existing hostilities in Cuba, so prejudicial alike to Cuba, to Spain, and to the United States.

He repeated that, having no instructions on the subject, he therefore had not taken any interest in it.

I could not with propriety urge the matter any further, and proceeded to converse with him on other topics of secondary political interest, especially to answer particular inquiries of his concerning Alaska and its metallic productions, and concerning the condition of our Indians.

Let me now revert to the remarks of Prince Gortchakoff to Mr. Boker, and collate them with what was said to me by Mr. Koudriaffsky.

It is true, as Prince Gortchakoff says, that there is little relation of interests or intercourse of any kind between Russia and Spain, except of a dynastic or nobiliary character.

It is not true, as he says, that the past alienation of Russia from Spain deprives the former of present influence at Madrid, as you may judge from the efforts of the Spanish Government to conciliate that of Russia, of which you have been informed by me from time to time.

He does not encourage the United States to proceed to "serious measures" in the present condition of Spain, but the contrary.

He spontaneously offered good offices and friendly advice, "if this course should be in accordance with the wishes of the Emperor;" not a very satisfactory reservation.

He is profuse in the utterance of courtier expressions, and in profes

sions of sympathy with the United States; all which results in his advising Mr. Koudriaffsky that we are but pushing private claims here, with which Russia has no concernment.

There, in my opinion, crops out a reminiscence of the Perkins claim and of Mr. Catacazy.

Permit me, before leaving this unwelcome subject, to submit some relative suggestions.

All the flattering and sympathetic utterances of Prince Gortchakoff sound hollow to my ear. Russia can have no ties of sympathy with us, political, religious, or commercial. She had very close ties to attach her to us until twenty-five years ago, down to which time we were her best customers, and almost her sole channel of supply for the commodities of the West Indies, but our prohibitory duties on iron and hemp have cut off that connection, so profitable to both of us, and our chief commercial relation now is one of repulsion, that of rivals in the production of wheat for the consumption of Europe.

Moreover, she doubts now, since the extension of her power in the seas of Japan, whether she did wisely in ceding to us the mainland, and especially the islands, of Alaska.

In my judgment, therefore, the best that we can hope from Russia in the present question is indifference, and we have cause to fear, in the last resort, tendencies of rapprochement to Spain rather than to the United States.

I observe in your circular to Mr. Boker (as well as to others) that the idea of the spontaneous abandonment by Spain of the contest in Cuba is presented in more distinct terms than it is in the note of November or in the message.

Now, it is self-evident that Spain will not spontaneously abandon Cuba.

The other alternatives presented are, agreement between the parties in the contest, or leaving Spain to terminate the contest by force.

I can not judge from the report of Mr. Boker's interview with Prince Gortchakoff whether these three alternative suppositions were each distinctly represented to him by Mr. Boker; but certainly nothing appears in the remarks of Prince Gortchakoff to show that, if Spain refuses to spontaneously abandon the contest (as she certainly will), and if she is unable (however willing she may be) to end the contest by any agreement with the insurgents or their professed chiefs in New York—and if nothing remains for her but to continue to endeavor to exterminate the contest by force, and if the United States intervene to defeat her endeavors in that respect, which is war—I say, nothing appears in the report to show that Russia would countenance such extreme action on the part of the United States.

One thing more. All the great powers are preoccupied with the question of Turkey. France looks on with angry consciousness of her incapacity to act a first part in the question, and while dissatisfied with the substitution of the influence of Great Britain in Egypt for her own, yet feels inclined, nevertheless, for want of other resources, to lean on Great Britain, while anxiously deferring to Russia. Meanwhile the three Emperors have undertaken the task of nominal intervention, reduced almost to mere intercession, in the internal affairs of Turkey, in which Great Britain, after securing control of the Suez Canal without so much as saying "by your leave" to the other powers, acquiesces in the present initiatory step, reserving to herself perfect freedom of action respecting all further incidents in the East.

Now, what is the present step, in which alone all the powers are of accord?

The brief but significant response of the Porte is, it seems to me, a remarkable exhibition of statemanship. It says, in effect, to the allies: "You advise us, in the interest of peace, to introduce certain specified reforms of administration in our discontented provinces. We had already determined to do not only so much, but even much more; we cheerfully take your advice therefore, but we do so in the express understanding that you, Russia; that you, Austria, are to cease to allow your subjects or protégés to aid our rebels in Bosnia and Herzegovina; that you are to use all your moral authority at least to induce those rebels to lay down their arms and accept the measures of reform graciously granted by the Sultan."

Such are the conditions of a practical friendly intervention which are now present to everybody's mind in Madrid, to wit, an agreement between the Porte and its rebel subjects by means of the mediation and moral influence of the allies on condition of certain administrative reforms conceded by the Porte.

The sympathies, the sentimental emotions, the reminiscences of frontier disturbances, the contingent ambitions of Russia and Austria with respect to the rebel subjects of the Porte are far stronger than ours on the side of Cuba. And yet those powers recognize the duty of applying pressure in the sense of peace equally to the rebels as to the Porte.

It is the third of the alternatives suggested in your circular instruction, namely, agreement between the parties to the contest in Cuba. In such a plan, if promoted by us, the great powers would go with us, while if we undertake to force Spain to abandon Cuba, which is hostilities at least, if not formal war, we shall have all the powers exerting their moral authority (if not more) in behalf of Spain.

I have, etc.,

C. CUSHING.

Mr. Fish to Mr. Cushing.

No. 323.] DEPARTMENT OF STATE,
Washington, March 1, 1876.

SIR: I have laid before the President your No. 777, under date of the 16th of January, and he received with sincere gratification the expressions of Mr. Calderon y Collantes of the earnest desire of the Government of Don Alfonso in the sense of peace, good government, and liberty in Cuba, and that his Government freely admitted the political expediency and necessity of abandoning the old colonial system and of promptly consummating the emancipation of the slaves in that island.

The President feels that these expressions bring the two Governments in accord in their views and wishes on these points.

He accepts, also, the earnest expression of consciousness on the part of Spain that the United States and Spain are by commercial ties inseparably associated in the question of the tranquillity and prosperity of Cuba.

Nature has placed that island in our immediate neighborhood, and has established the foundations of the relations of business, commerce, and material interest, which Spain thus recognizes.

Discovery and long occupation have made the island a possession of Spain, and the United States has no desire to disturb the relations which result therefrom. These positions being reciprocally recognized, there should be no cause for serious disagreement, or for any mistrust between the two powers with regard to the future of the island, or in

reference to the measures to be adopted to bring about a return of peace and prosperity.

Part of the territory of the one power, it is the seat of immense trade for the other. The interests of both in its welfare, its peace, and its good government are equal but not identical. The people of both Governments resort thither, associate together, and, with the natives of the island, invest their means, and are alike anxious for its best interests. It behooves the two Governments, therefore, each in the direction and in the proportion of its respective but different relations, to seek its peace, to advance its welfare, and to assist toward its prosperity.

Having a common desire, with similar interests to protect and equivalent advantages to gain from an improvement in its condition, the Government of the United States has been ready to effectually cooperate with or aid the government of His Majesty in securing these results, and the earnest efforts of the President in that direction are still ready to be called into exercise.

In considering the means to this end he desires to propose none but those of friendly suggestion and, if it be practicable, of friendly advice to those who are in resistance in Cuba.

He finds in the statement reported by you as made by Mr. Calderon y Collantes that his Government freely admits the political expediency and necessity of abandoning the old colonial system of administration in Cuba, an agreement with the opinion expressed in a recent instruction to you (No. 266, under date of 5th of November, 1875), which avoids any necessity of reference to the causes which have led to the insurrection of Yara, and which have prevented its suppression.

The admission that the old colonial system is inadequate to the government of a people of a million and a half, in the present age, imposes upon the parent Government the urgent necessity of the early formation of another system to take the place of that which has outlived its capacity and adaptation to the happiness and welfare of those for whose happiness and welfare government alone exists. In the present case the President is of opinion that it belongs to the enlightened wisdom of the Government of Spain without delay to inaugurate this new system, suited to the more advanced opinions of modern civilization and more consonant with the prevailing opinion of enlarged powers of local self-government.

But Mr. Calderon y Collantes, as you inform me, was pleased to invite a frank statement concerning the precise thing which the United States would advise or wish Spain to do, adding that he could not conceive that anything unjust or impracticable would be proposed. In this last expression he does no more than justice to the desire and the wishes of the United States. In response therefore to the suggestion of the distinguished minister of state and in full accord with the feelings and frankness which led him to invite expression on the part of this Government, I venture to submit some views which the President desires to bring to his consideration.

In so doing, it would be unjust both to the minister of state and to the United States if what is to be said were other than a plain and frank statement of the views of the President. At the same time, if in the reference which may be herein made to any relations or incidents there be found ought to excite any sensibilities, he desires in advance to assure His Majesty's Government that it will be deeply regretted, and that no word will be said other than with the view to a full consideration of the real and actual condition of the question, with which he believes His Majesty's Government as well as himself is

endeavoring to deal, in the interests of both nations, and for the peace, prosperity, and development of the wealth and industry of the Island of Cuba.

In the first place, the President desires emphatically to disabuse the mind of the Government and people of Spain of the existence of any desire on the part of the Government of the United States for the acquisition of Cuba or for its annexation, directly or indirectly, to the possessions of this country. Whatever suspicions of such desire may heretofore have been entertained should be rejected to enable Spain to do justice to the motives, policy, and feelings of the United States. Whatever grounds may be supposed to have existed in the past evincing such desire, there are at this time no considerations, moral, social, political, or financial, which are regarded by the President as making the acquisition of Cuba by the United States either desirable or convenient.

The President, moreover, desires in an equally emphatic manner to express the desire of the United States to maintain a firm, solid, and enduring peace with Spain, and to remove every disturbing question which embarrasses or which can threaten the relations of the two countries.

With these premises, I proceed to respond to Mr. Calderon y Collantes's request for a frank statement of what the United States would advise or wish Spain to do with regard to Cuba. You will, in the name of the President, state that his earnest wish is:

First. The mutual and reciprocal observance of treaty obligations, and a full, friendly, and liberal understanding and interpretation of all doubtful treaty provisions, wherever doubt or question may exist.

Second. Peace, order, and good government in Cuba, which involves prompt and effective measures to restore peace, and the establishment of a government suited to the spirit and necessities of the age; liberal in its provisions, wherein justice can be meted out to all alike, according to defined and well-established provisions.

Third. Gradual but effectual emancipation of the slaves.

Fourth. Improvement of commercial facilities and the removal of the obstructions now existing in the way of trade and commerce.

Concerning the first point the President at this time does not desire to make particular reference to questions which alone concern individual grievances of the United States or its citizens.

These have already been placed fully before the minister of state, and it is hoped that negotiations now in progress will dispose of all such questions in a manner satisfactory and beneficial to both parties.

He therefore contents himself with the expression of this hope, and is of opinion, if irreconcilable constructions be found, or if the provisions of existing treaties be too indefinite or not sufficiently comprehensive, that these difficulties may hereafter be removed by a new and more explicit convention.

Concerning the second point, providing for the return of peace, the establishment of order and good government in Cuba, the President recognizes that the successive governments which have existed in Spain since the breaking out of the insurrection and the different ministers who have, from time to time, directed the affairs of state have been unanimous in their expression of desire to restore peace and create reforms in Cuba.

That the system under which Cuba has been governed has become antiquated, unsuited to her condition, calculated to excite opposition and hostility, and attended by acts of oppression and wrong to her

people and of injury to all having relations with her appears to be fully admitted, and is commented upon and proclaimed continually both in Spain and Cuba.

Upon many occasions when these matters have been discussed, the facts have been frankly admitted, and the assurance given that when the rebellion had been crushed out by force, then wise and just reforms would be introduced.

But it has been found up to the present time impossible to conquer a peace by force of arms, and every suggestion that amnesty, reform, and the certainty of good government might be effective where force has failed has been repelled.

More than six years ago such was the condition of affairs, and it remains the same to-day. Assurances were then given that reforms and concessions would be inaugurated as soon as the insurrection should be subdued, but that they would not be allowed while armed opposition remained. Since then, and under the policy of making that last which should be first, of making that the result which should be the means, the insurrectionary forces have year by year prosecuted their operations over more extensive regions, and their torch is devastating farther and father.

Experience has shown, upon this continent at least, the difficulty, if not the impossibility, of subduing by mere force any serious uprising of a people against a distant government where grave causes of discontent and injury exist, and where the parent government persistently refuses to remove the causes of complaint or to remedy the evils until the insurrection shall have been effectually crushed.

In the last century Great Britain refused to concede to her colonies which now are embraced within the United States privileges and rights which, if then conceded, would have left those colonies part of the possession of Great Britain. Separation ensued.

In the present century when Canada complained of wrongs and of the maladministration of government, Great Britain, with the experience of the past, wisely made concessions and introduced reforms. Resistance disappeared, and Canada is a loyal, happy, and quiet dependence of Great Britain.

The earlier part of the present century presents instances of colonies on this continent dropping off from the parent country for want of timely concession.

Puerto Rico is a contented possession of Spain, having received concessions withheld from Cuba, which has been the scene of war for seven years.

The President believes and desires most earnestly, in the way of friendly consultation and fraternal advice, to impress upon His Majesty and his Government that in order to allay the existing strife in Cuba the olive branch is more potent than the sword.

If, in addition, the measures adopted to repress the insurrection are harsh and ill-directed, each new effort gives foundation for a new dissatisfaction and new cause for rebellion.

The President therefore amicably, sincerely, and earnestly suggests the immediate adoption of measures founded on a declaration of complete and entire amnesty, with an invitation to all Cubans to return at will, and to all those in arms to return to peaceful occupation, guaranteeing to all immunity in person and property for acts of rebellion, such declaration to be accompanied by the adoption and proclamation of the necessary measures to provide a just and liberal government, with large powers of local and self control, under proper municipal

organizations, suited to the colonial possessions of an enlightened distant power at the present day.

He places these requirements together and dependent each upon the other, because experience has demonstrated that no other course can be effective.

The President is of opinion that the administration of law in Spain has been demonstrated to be prompt, searching, and decisive when the Government so desires; that impositions by way of taxation or contribution to the support of the Government have not there generally been excessive or unequally distributed; that justice is meted out to individuals with impartiality and fairness; that positions of trust and honor are held by men worthy of distinction, and that the opportunities for education and cultivation are ample to all who desire to avail themselves thereof.

It is believed, however, that in Cuba no such advantages or immunities have been provided or enjoyed, and that abuses and wrongs which would not be tolerated in the peninsula have been allowed and are perpetuated in this island.

The administration of law has been substantially subordinate to military force; offenses against the Government, whether really committed or only suspected, have been punished at the will of military officers or under the forms of military courts, and the island has been, in fact, governed, even in times of peace, by martial law.

Exactions by way of taxes, imposts, and contributions have been onerous and oppressive, so much so, in fact, as to make it often questionable whether the possession of property, with the risks attendant upon its cultivation, would not result in loss. These exactions have been governed by no fixed rule, are enforced by an arbitrary power in the island, and large proportions fail to reach the public treasury, or to contribute in any manner to the support of the Government, but are diverted to private purposes. The existence of such a system actually tends to prolong the war, and to make those who profit by such transactions unwilling to change the condition of affairs.

Public positions are held by persons sent by Spain to the island, who are wanting in interest in the welfare of Cuba, and who resort thither for the mere purpose of pecuniary profit, intending to return to Spain so soon as their avarice is satisfied.

General report and belief speak loudly of corruption, and a large number of public officers are charged with securing profit from their positions. As a consequence, the whole administration of the island suffers in public estimation and is believed to be wanting in the qualities which alone can satisfy an enlightened public opinion.

Oppressive commercial regulations, injurious to trade, discriminating directly against Cuba, enhance the price of commodities. Fines imposed upon vessels for trivial offenses and large exactions by way of consular fees for clearances of vessels destined for her ports discourage trade and commerce and tend to place the island at a serious disadvantage.

All these evils are matters of public notoriety, discussion, and comment, and are as loudly condemned in Spain as in the United States.

Spain can not desire to continue such a system, or to permit it to exist, and at the same time she stands before the world as perpetuating the system and as responsible directly for all the results which legitimately flow therefrom.

The absence of just rights and protection and the perpetuation of these wrongs has been the cause of the discontent in Cuba; the further continuance of this condition of things will protract the strife.

Upon the third point it seems necessary only to point to recent events in this country and in Europe, which have demonstrated that the day has passed when the enlightened sentiment of the world will tolerate the holding of a race of human beings in a condition of slavery.

It is true that private rights, organized methods of labor, which can not be rudely changed, and public considerations growing out of the enfranchisement of a large body of slaves may make it necessary that the steps to this end should be carefully adopted. At the same time, the point to be gained is the fact of the emancipation attended by well-devised measures to render it effectual.

Upon the last point, concerning the improvement of commercial facilities and the removal of the obstructions to trade, it can not be questioned that, with peace established and liberal government introduced in Cuba, the existing commercial regulations will prove entirely inadequate, whether regarded in the light of the interests of the inhabitants and owners of property in Cuba or in that of the interests of commercial nations trading with the island.

The obstructions which hamper and burden commerce at the present day with Cuba, to a large extent closing the trade of the island to many of the productions of the United States and of other countries, are part and parcel of a system which should be removed in the interest and for the welfare of the people of Cuba and for the promotion of free commercial intercourse between that productive island and the rest of the world.

Establish peace, good order, and good government; allow full opportunity for the development of the resources of the island and the introduction into it upon terms favorable to its interests of the productions of other countries and Spain will certainly convert the island, now in a state of discontent, distrust, and rebellion, into a prosperous and happy people.

If the views of the Government of the King are in accord with those of the President (as herein expressed on the invitation of the minister of state) as to the means to be adopted to restore peace and tranquillity to Cuba, and if that Government request his good offices to that end, he will cheerfully and readily use every proper effort in his power to secure this much-desired result.

These views are given in response to the invitation of Mr. Calderon y Collantes, as communicated by you, and are expressed in sincerity and with the frankness due to a grave and important question.

Should the Government of Spain agree in these suggestions and earnestly and firmly pursue such policy as is herein referred to, little doubt exists in the opinion of the President that such measures will prove effective. In any event, such a course would, in his opinion, immediately draw to the Spanish Government the moral support of the nations of the earth, and remove from the insurrection any sympathy which now attaches to it.

The alternative of the course of conciliation and of reform which the President has suggested, in response to the invitation for the expression of advice, would involve Spain in the illogical position of a continued maintenance of a system which she admits to be wrong until greater sacrifices of life than have yet been made be incurred in sustaining and in enforcing such wrong, and other lives be sacrificed in the effort to obtain what Spain declares herself willing to accord.

The President concludes with the renewed expression of his earnest hope that peace and order may soon be reestablished, and that the course of peaceful trade and intercourse may be soon restored to the

peoples of both nations, with Cuba and its inhabitants undisturbed by the derangements which have attended upon the strife which has prevailed in the island for the past seven years.

You are authorized to read this to the minister of state.

I am, etc.,

HAMILTON FISH.

Mr. Cushing to Mr. Fish.

No. 862.] LEGATION OF THE UNITED STATES,
Madrid, March 2, 1876.

SIR: The President's message has had the salutary effect of modifying and mollifying to a very sensible degree the opinions and feelings, as well of the Cuban Spaniards as of the Peninsula Spaniards.

As to the former, it has awakened them from the dream of immediate independence. Moreover, they desire to put a stop to the incendiary operations of the insurgents in Cuba, which they see tend to render the island as useless to them as to Spain and the United States.

Such is now the state of mind of influential Cuban Spaniards in Europe, as manifested by late important publications of theirs, and as it also appears to be with the Cuban Spaniards in New York.

Spain herself, while determined not to abandon Cuba (no Spanish Government, however constituted, could do that spontaneously and live a month), has been made more pliant by the confidence she finds in the message of the disinterestedness of our Government and in our recognition of the nonexistence in Cuba at the present time of the necessary elements of independence; and she longs to have peace, to be relieved from further sacrifice of men and money, and to stand well with the world, and especially with the United States, in the administration of Cuba.

The complete overthrow of Don Carlos, with the domestic questions and difficulties, political and financial, which the Government has now to encounter, augments rather than diminishes its anxiety for a real pacification of Cuba.

And the problem, as regarded here, is whether the Dominicans who conduct the so-called military operations in Cuba, bred up as they have been in the traditions of mere devastation, which have converted Santo Domingo, once the richest of the great West India Islands, into the poorest, and kept it for three-quarters of a century in a state of semi-barbarism, can be reached by any pacific influences, either of Spain or of the United States.

I have, etc.,

C. CUSHING.

Mr. Fish to Mr. Cushing.

No. 324.] DEPARTMENT OF STATE,
Washington, March 3, 1876.

SIR: Referring to your No. 777 under date of January 16, and in particular to the statement that in your interview of the preceding day the minister of state had informed you that as it had occurred to him that this Government might have concluded not to act on his note of November 15 without hearing from the European Governments in relation thereto, and that in this view he had resolved to defer writing the contemplated responsive circular of Spain to those Governments until

after hearing from the United States, I have to state that on several occasions, and in various quarters, information has reached this Government of some circular having been issued by the Spanish Government as to affairs in Cuba and in Spain.

With these expressions of the minister of state before me, and as no copy of any such circular has directly or indirectly reached this Department, it is not considered likely that any response to instruction No. 266, addressed to you and read to the minister of state, has been issued, as has been stated, nor that any general circular has been issued bearing on affairs in Cuba.

I shall be glad, however, to be informed to what paper these statements refer, and to be promptly furnished with copies of any paper or circular which may have been issued by the Spanish Government bearing on events in Cuba or in reference to Spanish affairs.

If any such paper exists, you will appreciate that the reasons which have prevented the Department from making direct inquiries here concerning it render it inadvisable for you to make formal application therefor.

I am, etc., HAMILTON FISH.

Mr. Cushing to Mr. Fish.

No. 865.] LEGATION OF THE UNITED STATES,
Madrid, March 7, 1876.

SIR: Your note of November 5 has been printed in a Spanish translation without abridgment in several of the newspapers of Madrid, and is the subject of prolonged discussion by them, as well as of commentary in political circles.

It is not in my power to send you translation of these articles without neglecting other things of more importance, nor does there seem to be need of it.

I content myself with indicating some of the more salient points of criticism in this relation, which appear in print or in conversation.

I.—THE REBELLION IN CUBA.

1. It is alleged, while admitting acts of censurable violence on the part of officers or troops of the Government, that such acts were forced upon them by still worse acts of the rebels, beginning with the foreign adventurer Quesada, and continued by other foreign adventurers, Dominicans, Venezuelans, Mexicans, North Americans, and others, having no real interest in Cuba.

2. It is alleged that the rebellion is really abandoned by most of the Spanish Cubans, who now are serving in the ranks of the loyal volunteers, or hiding their shame and their sorrow as voluntary exiles in various countries of Europe and America.

3. Much is said of the discreditable character and acts of the pretended directors of the rebellion in New York, who, it is charged, are mainly occupied in criminal intrigues against the peace of the United States.

4. It is alleged that in its persistent efforts, at any cost of treasure and blood, to suppress the insurrection in Cuba, the Spanish Government does but follow in the footsteps of the United States in their recent determined stand for the maintenance of their national integrity.

5. It is alleged that the commerce of the United States has not suf-

fered prejudice by the rebellion in Cuba; and that, in addition to the ordinary commerce, we now possess that of the supply of arms, provisions, and other military and naval supplies greatly to our advantage.

Nearly all the small arms used in Spain and Cuba, on both sides, are, it seems, manufactured in the United States.

In this connection attention is called to the very great prejudice which our civil war inflicted on Great Britain and other countries by raising the price or cutting off the supply of the cotton of the United States.

6. It is alleged that the intervention proposed by the United States appears to imply pressure on Spain rather than on the rebels, and that such intervention must necessarily be repelled by Spain for the same considerations, self-respect, and sovereign right which induced the United States to repel foreign intervention during the secession rebellion of our Southern States.

7. Finally, it is alleged that all the European Governments, preoccupied with cares of their own, regard with indifference the intimations on the subject of Cuba which have been made by the United States.

I think what is said in this respect is based in part on informal conversation between members of the diplomatic body and some of the members of the King's Government.

II.—As to Reclamations.

1. It is alleged that most of the reclamations put forward by the United States are for slave property, to the discredit of our emancipation professions.

In this relation attention is called by the newspapers to the pertinent clause of the President's message, and more especially to your recent letter to Mr. Swann, translation of which has made its appearance here in Spanish.

The point is much dwelt upon, with citations from our newspapers.

2. It is alleged that Spain has acted with great promptitude in agreeing to a claims commission earlier than any other Government ever did; while, on the contrary, we, the United States, have not to this day made provision for civil war claims of Germans, Frenchmen, and especially Spaniards.

3. Much is alleged as to the dishonest character of the citizenship of the claimants; most of them Spaniards of recent naturalization, few of whom, it is said, ever had bona fide residence in the United States.

The minister of state has more than once alluded to this point in terms the more disagreeable for being founded on truth.

He says it can be proved that most of these new-born North Americans were domiciled in Cuba, with their city residences and their country plantations there, and in the public exercise of all the rights of Spaniards, during the very time of their pretended residence in the United States, to which at most they had paid but transitory summer visits, and that some of them have founded on their being at school in the United States when boys, although after that they had lived in Cuba, engaged in business, and claiming and exercising all the rights of Spaniards.

He concedes, however, that questions of this class ought to have been raised at an early day, and says the King's Government submits to the burden in this respect imposed upon it by the negligences and procrastinations of its predecessors, and therefore now acquiesces in the claims

of all Spaniards who at the time of the imputed wrong were certified citizens of the United States.

To conclude, the above notes are a faithful but greatly abridged abstract of the comments referred to, and appear to me to be as full as is required for information.

I have, etc., C. CUSHING.

Mr. Fish to Mr. Cushing.

No. 329.] DEPARTMENT OF STATE,
Washington, March 11, 1876.

SIR: Referring to previous correspondence on the subject, I inclose herewith for your further information, a copy of a dispatch, No. 56, under date of the 10th ultimo, from Mr. Boker, the minister of the United States at St. Petersburg, relating to the Cuban difficulty with Spain.

I am, sir, etc., HAMILTON FISH.

Mr. Fish to Mr. Cushing.

No. 331.] DEPARTMENT OF STATE,
Washington, March 15, 1876.

SIR: Referring to your No. 841, under date of the 19th ultimo, relating to the memorandum addressed by the minister of state at Madrid to the representatives of Spain in foreign countries on the subject of Cuba, I have to state that Mr. Mantilla left a copy of the memorandum at the Department on the 8th instant.

I am, etc., HAMILTON FISH.

Mr. Fish to Mr. Cushing.

No. 332.] DEPARTMENT OF STATE,
Washington, March 15, 1876.

SIR: Recurring to my No. 315 of the 16th ultimo, transmitting a copy of two dispatches from Mr. Davis at Berlin, relating to Cuban affairs, I have to state that Mr. Davis has since requested that the following correction may be made in his No. 249.

In the last paragraph but one, after "Petersburg," insert "wrote the Government there," so that the passage may read: "Lord Odo also added that the British ambassador at Petersburg wrote that the Government there manifested," etc.

I will thank you to make the above correction in the copy transmitted to you.

I am, etc., HAMILTON FISH.

Mr. Fish to Mr. Cushing.

No. 333.] DEPARTMENT OF STATE,
Washington, March 15, 1876.

SIR: Referring to previous correspondence on the subject, I inclose herewith, for your further information, a copy of a dispatch under date of the 15th ultimo, No. 1288, from Mr. Washburne at Paris, relating to Spanish-Cuban affairs.

I am, etc., HAMILTON FISH.

Mr. Cushing to Mr. Fish.

No. 868.] LEGATION OF THE UNITED STATES,
Madrid, March 16, 1876.

SIR: My No. 834,[1] of the 16th ultimo, reported to you the opening of the colegislative chambers of the Spanish Cortes.

During their sessions of the first fortnight they were chiefly occupied with consideration and determination of the comparatively few cases of contested returns of members, either of the Senate or of the Congress.

Since then the subject of debate has been the proposed message of response to the opening address of the King.

In this debate leading men of the diverse factions of the opposition, such as the Marquis de Sardoal, Mr. Pidal, Mr. Romero Ortiz, Mr. Moyano, and Mr. Sagasta, have respectively said their say with more or less of zeal or ability, and have been answered chiefly by four of the ministers, Messrs. Canovas del Castillo, Martin Herrera, Calderon y Collantes, and Romero Robledo—the president of the council and the minister of state especially distinguishing themselves in defense of the acts, plans, and purposes of the Government.

With but here and there a trivial exception, the debate has been dignified in form, although most unprofitable in substance, for it has mainly consisted of easy exhibition of the inconsistencies, the errors and the crimes, the tergiversations, pronunciamientos, treasons, and insurrections of which all parties have heretofore been guilty, as, one after the other, they attained the giddy heights of political power, or sank into the depths of angry, impatient, and factious opposition.

In these mutual recriminations of parties, in this general settlement of political account between successive governments and administrations—which has only served to show that all of them, as they rose, ascended on the ruins of their country, and, as they fell, left behind a deplorable deficit of wisdom and usefulness to the debit of each—there is little which would interest you sufficiently to justify the labor of translation.

I annex, however, an extract from the speech of Mr. Sagasta touching the United States, both because of its matter and of the political importance of the speaker, who undoubtedly, apart from the special weight of his position as the parliamentary leader of the Constitutional party, deserves to be ranked among the most practical and the most influential of the statesmen of Spain.

I have, etc., C. CUSHING.

[Appendix A with No. 868.—Extract translated.—Remarks of Mr. Sagasta in the Cortes, March 15, 1876, touching the United States.—From the Gaceta de Madrid, March 16, 1876.]

* * * * * * *

As does the committee, so does the Constitutional party, desire that a frank and elevated policy be adopted, resting on the principle of strict neutrality, our nation invoking an equal right with respect to the other nations. The Government ought to be resolute in this, and it will then count upon the support of the Constitutional party in this course, provided it do not interfere in the affairs of other nations and do not permit other nations to interfere in ours, without, however, thereby ceasing to strive for the recuperation of her ancient splendor; not by means of force, but in common accord with other nations interested in this subject.

It is to be hoped that, in pursuance of this policy, the settlement of our differences with the United States may be speedily reached. If in the Island of Cuba such atrocious crimes are committed as that of fixing a price for the assassination of our soldiers and volunteers, still those horrible deeds of which other civilized countries have given us examples have never been witnessed there.

[1] Not printed.

The United States well know how difficult it is to subject to determinate rules a fratricidal struggle, because not long ago they themselves had such a struggle, with a great advantage compared with ours, since they were not forced to cross the seas in order to fight. Our war in the Island of Cuba has not assumed the character of a genuine war, but of savage brigandage (bandolerismo), and it is to be hoped that the United States, instead of taunting us, will try to show us their good will.

And now that I am treating of the United States, I touch the confines of the colonial question, and I would speak of the colonial question; but I do not wish to do so so long as the rebellion exists there; so long as there remains one to cry, "Death to Spain;" and I will therefore confine myself to saying that the Government should have no other thought than that of saving, cost what it may, the national integrity, sending out to that end not only all the necessary forces, but also whatever resources may be demanded by the state of the island, and adopting severe measures against those who, forgetting that it is not allowed to them to attack the integrity of their country, are aiding the rebels who slay our volunteers and soldiers.

Having made these brief observations, which I merely do in outline, I shall now enter upon the examination of our domestic policy.

* * * * * * *

Mr. Cushing to Mr. Fish.

No. 869.] LEGATION OF THE UNITED STATES,
Madrid, March 17, 1876. (Received April 5.)

Sir: I continue to receive expressions of good will from Mr. Layard in reference to the special questions connected with Cuba, in which our respective Governments have a common interest, but with complete silence on the general question of intervention or mediation in Cuba.

The truth is that the European relations of Great Britain and Spain outweigh the matter of their relations in America.

The general relations of the two Governments stand on the most equivocal premises, prolific in difficult and vexatious questions, to wit, old treaties dating back as far as the reign of James I, modified from time to time, and, what is worse, annulled by successive wars, and then renewed at the conclusion of peace by broad stipulations of revivor, covering in terms many commercial provisions which are of difficult, if not impossible, application in the present state of Europe.

I annex a copy of extracts from several of these treaties on a single point, the "favored-nation" stipulation, by which you may see clearly the vague and loose condition of the existing treaty relations of the two Governments.

If these stipulations are to be liberally observed, it is plain to see that the revenue system of Spain becomes totally and perpetually dependent on that of Great Britain.

I think we in the United States have at all times been scrupulous on that point, especially avoiding to concede perpetuity of stipulations affecting revenue.

My own opinion has always been adverse to such stipulations, except in specific cases, where they involve special equivalents of reciprocal value. (See Attorney-General's Opinions, Vol. VI, p. 149.)

Indeed, if these "favored nation" clauses were of definite and effective application, it would be superfluous to enter into extended treaty after extended treaty, for it would suffice to make every new treaty consist merely of a general "favored nation" stipulation. Happily for us, who have spread ourselves out so much in several of our treaties, especially those with the petty States of Central America and some others, the stipulations of that nature are of limited application, just in proportion to their indefiniteness and their generality of expression.

Meanwhile, in these loose and, many of them, obsolete stipulations,

finally revived en bloc by the treaty of August 25, 1814 (see Cantillo, p. 733), questions are continually springing up between Great Britain and Spain which lead to prolonged discussion, not always in amiable spirit.

Thus, what is the forum for the trial of British subjects in Spain? A special juez conservador says, in effect, the treaty of 1667, which gives to England all the privileges enjoyed by the Hanse Towns, among which was a juez conservador. And yet the recent laws of Spain long since abolished that forum, with the apparent acquiescence of Great Britain.

Again, to what taxes are British subjects liable in Spain? The royal order of June 18, 1875, transmitted with my No. 630, carefully distinguished, you remember, between treaty rights in this respect and comity rights outside of treaty, and refuses to place Great Britain in the first-named class in virtue of the "favored nation" stipulation, although in virtue of such a stipulation it places Belgium on the footing of the exemptions accorded by express treaty to Germany.

You will readily perceive what a crop of treaty questions between Great Britain and Spain is produced by the equivocal nature of their treaty relations, which apparently cover everything, but are so vague as to afford to either Government opportunity to deny their application to any specific thing in controversy.

Spain is particularly discontented on two points: One, the heavy differential duty imposed by Great Britain on Spanish wines; and the other, the systematic prosecution of contraband from Gibraltar, the efforts of Spain to protect her commerce in this respect giving rise to frequent collisions in the bay of Algeciras, a recent example of which is the capture and recapture of the smuggling schooner *Amalia*.

I annex a statement of the case as understood by the Spaniards.

I might enlarge on these various points, but what has been said will serve to explain further my belief, heretofore expressed, that the British Government has too many questions of its own to discuss here to be ready to follow or accompany us at present in any official act for the pacification of Cuba.

My conclusion in this respect, let me say, was founded on considerations which assume all possible friendliness of spirit on the part of the British Government, although Spaniards are not wanting who suggest to me that Great Britain is secretly impelled in this particular question toward a state of sympathy with Spain rather than the United States, in view of the magnitude of her own great insular or continental dependencies in America.

I have, etc., C. CUSHING

[Appendix A, No. 869.—Extracts from treaties between Spain and Great Britain.]

Thirty-eighth article of treaty of 1667.

It is agreed and concluded that the people and subjects of the King of Great Britain and of the King of Spain shall have and enjoy in the respective lands, seas, ports, havens, roads, and territories of the one or the other, and in all places whatsoever, the same privileges, securities, liberties, and immunities, whether they concern their persons or trade, with all the beneficial clauses and circumstances which have been granted or shall be hereafter granted by either of the said Kings to the Most Christian King, the States General of the United Provinces, the Hanse Towns, or any other Kingdom or State whatsoever, in as full, ample, and beneficial manner as if the same were particularly mentioned and inserted in this treaty.

Second article of treaty of Utrecht, 1713, November 28–December 9.

And as it has been agreed, as is above mentioned, concerning the rates of duties, so it is ordained as a general rule between their Majesties that all and every one of their subjects shall, in all lands and places subject to the command of their respective Majesties, use and enjoy at least the same privileges, liberties, and immunities concerning all imposts and duties whatsoever which relate to persons, wares, merchandise, ships, freighting, mariners, navigation, and commerce, and enjoy the same favor in all things (as well in the courts of justice as in all those things which relate to trade, or any other trade whatsoever) as the most-favored nation uses and enjoys, or may use or enjoy for the future, as is explained more at large in the thirty-eighth article of the treaty of 1667, which is specially inserted in the foregoing article.

Ninth article of the treaty of 1713, July 9–18.

It is further agreed and concluded as a general rule that all and singular the subjects of each Kingdom shall in all countries and places on both sides have and enjoy at least the same privileges and immunities as to all duties, impositions, or customs whatsoever relating to persons, goods, and merchandise, ships, freights, seamen, navigation, and commerce, and shall have the like favor in all things as the subjects of France, or any other foreign nation, the most favored, have, possess, and enjoy, or at any time hereafter may have, possess, or enjoy.

Third article of treaty of 1715.

After referring to duties on wool and other merchandise, the article concludes:

"* * * And all the rights, privileges, franchises, and immunities which shall be granted or permitted to any nation whatever shall likewise be granted and permitted to the said subjects (of His Britannic Majesty); the same shall be granted, observed, and permitted to the subjects of Spain in the Kingdom of His Britannic Majesty."

By the treaty of 1814 (August 25) all these previous treaties between Great Britain and Spain are "ratified, confirmed."

[Appendix B, No. 869.—Translation.—Extract in reference to smuggling at Gibraltar, from La Politica, March 16, 1876.]

From Algeciras we receive the following:

"The commandant of the coast-guard station at Algeciras having received confidential intelligence that the schooner *Amalia* was about to sail from Gibraltar under the English flag for the purpose of clandestinely landing her cargo on the Mediterranean coast, as she has done many times before, eluding the vigilance of the coast guards, he gave instructions to the cutter *Invincible* to take up a convenient position, and, in effect, on the 27th of February when the schooner sailed from Gibraltar, she was seized by the *Invincible* outside of British waters, and the captain embarked four seamen on her, setting sail toward the anchorage of Algeciras, the schooner being escorted by the cutter (escampavía), which is a Spanish vessel of war (the same as though she was a frigate); but the weather being bad, with a heavy wind, her mast gave way and she was not able to keep on escorting the captured schooner, whereupon the crew of the latter being superior in numbers, the four seamen charged with navigating her were overpowered by the Spanish smugglers (revolver in hand), and she made sail for Gibraltar, anchoring at the arsenal, and the English authorities took charge of the vessel, sending to jail the four seamen of the Spanish ship of war which had captured her. The cutter, having repaired her damages, anchored at Algeciras, and reported to the commandant of the coast guard, who immediately sent a telegram of what had occurred to the captain-general of the department of Cadiz, and went to Gibraltar to confer with our consul there, protesting energetically, and forthwith ordered the preparation of the corresponding sumario, in order to clear up and ascertain the facts. Our consul endeavored to procure the release of the four seamen detained in jail, mixed up there with brigands, and was only able to do so on making a deposit of 500 reals for each of them."

Mr. Fish to Mr. Cushing.

No. 342.] DEPARTMENT OF STATE,
Washington, March 22, 1876.

SIR: I have to acknowledge your dispatch, No. 853, marked "Confidential," relating to the attitude of the German minister at Madrid on

the question of intervention of the United States in Cuba, with comments by yourself.

I appreciate fully the difficulty and the delicacy of your position and your duties at Madrid, and am glad to recognize the ability with which you meet those duties; and after reading with interest (as I read all your dispatches) the larger part of the dispatch, but with increasing anxiety as I proceeded in its perusal, lest some grave mistake had been made in the instructions from this Department or some series of wrongs had been committed or permitted by this Government, I was very much gratified in reading the concluding part of the dispatch, from the paragraph beginning with "I add that the communication of the note of November to other powers" to find that the instruction of November 5 (No. 266), has in your judgment had the very effect which it had in view.

In these concluding sentences you have condensed, with a force and power peculiar to yourself, and for which I return you my acknowledgment, the main object, so far as effect with other powers was in contemplation, of the instruction. I need not here repeat what you have heretofore been told, that there was neither desire on the part of the Government of war with Spain nor expectation that war was imminent. That war might be the eventual result of a continuance of the condition in which Spain was allowing the relations with this Government to drift was a contingency not to be ignored; and the fact to which you have more than once alluded as one of the causes of alarm and of supposed menace, of the collecting of a naval force at Port Royal, was, in the first instance, for the wintering of the fleet; and secondly, as that harbor was at the same time commodious, convenient, and healthful, to have the force together. The possibility that Spain might protract negotiations for the settlement of the questions which you have been gradually bringing to a close, and the possibility of other events which the President's message sought to prevent, and which in your concluding paragraphs you think (as I do) that he has prevented, were not overlooked, and may have had a remote and incidental influence in the selection of a single harbor for the united winter quarters of the fleet; but in this the inducements of the Government were precautionary, not minatory.

The fact that it has attracted the attention which you report may possibly indicate that it has not been without influence in hastening some of the conclusions which seem to be happily in progress of attainment, and may have contributed to an appreciation of the serious earnestness of the President and of the sincerity of his expressions with regard to belligerence or independence, which, as you justly remarked, have "prepared the way to confidence." It was time that Spain should recognize the sincerity and long endurance of this Government under unfulfilled promises and repeated assaults on the rights of our citizens, and it was time that Spain should earnestly undertake the work of repressing an insurrection which was becoming—which had become—a public nuisance.

In the instruction, No. 266, sent to you, and communicated to other powers, the President had gravely and deliberately considered the course which he believed tended to the best interests of the country, and in the exercise of his constitutional powers and duty he declared it solemnly and earnestly. Had he contemplated or apprehended a hostile movement toward Spain he would not have left it to vague speculation, and you would have been advised of any, however ultimate or remote, intention in that direction.

It is a source of gratification to learn from the concluding part of the dispatch now acknowledged that the instruction of November 5 is appreciated in the sense in which it was intended, and that it meets your approval, as I am confident it will receive your cooperation.

I have also to acknowledge your dispatch No. 855, of the 28th of February, also relating to intervention with especial reference to the attitude of Russia.

I am, etc., HAMILTON FISH.

Mr. Cushing to Mr. Fish.

No. 877.] LEGATION OF THE UNITED STATES,
Madrid, March 23, 1876. (Received April 10.)

SIR: My Nos. 835, 849, 853, 855, and 869 will have communicated the impression received by me from intercourse with my principal colleagues of the diplomatic body in reference to the possibility of our being backed in any way by other powers in the idea of intervention or mediation with Spain on the subject of Cuba.

I reported in detail whatever could be gathered by me in this relation from the ministers respectively of Great Britain, Germany, Austria, and Russia.

The contents of your No. 315 have now come to more than confirm the convictions, previously formed by me, as to the indifference, if not opposition, to be expected by us from all the European powers.

1. *Great Britain.*—The Earl of Derby, in a carefully meditated argumentative paper under his own hand, concludes "that if nothing were contemplated (by the United States) beyond an amicable interposition having peace for its object, the time was ill chosen and the move premature."

These expressions, it seems to me, do not merely involve absolute determination of refusal to support us, but even rather positive, if not rude, condemnation of the proposition. Among his premises, two are to be specially noted, namely: (1) Refusal to cooperate, notwithstanding his doubts of the speedy success of the Spanish Government against the Carlists, and (2) citation of the corroborative opinions of Mr. Layard, seemingly done for the purpose of expressly contradicting the suggestion on my part of the favorable disposition of Mr. Layard.

Whatever hopes may have been entertained by me in this respect, based on general expressions of Mr. Layard, you are well aware have been long since dissipated.

I note also that Lord Derby is silent on the subject of the special treaty rights or duties of Great Britain in the matter of the emancipation in Cuba.

And the hint of a favorable disposition on the part of France is met by the declaration of Lord Derby that, in the opinion of the time for interposition being "ill chosen" and the "move premature," the view of the British Government was also that of the French and German Governments.

The observations of Lord Odo Russell to Mr. Davis are curious and suggestive. Was Lord Odo Russell ignorant on the 21st of January of the actual views of his own Government? That seems impossible. Or was he endeavoring to sound Mr. Davis on the hypothesis of joint action on the part of the British and American Governments?

2. *Germany.*—Mr. Davis's report of his interview with Mr. von Bülow edifies and almost amuses me, as offering an example of skillful fence

on the part of the latter to uphold the Spanish side of the question without giving umbrage to the United States, driving Mr. Davis to the necessity of arguing the very premises of the question on our side, without his having been able to extract from Mr. von Bülow explicit information "whether any counsel had been given to Spain, and if any, what it was." I should have preferred the plain rebuff of the Earl of Derby, or even some exhibition of the famous "brutal frankness" of Prince Bismarck.

For the rest, my study of the Count von Hatzfeldt enables me perfectly to understand what there is behind these studied reticences of Mr. von Bülow.

3. *Russia.*—Lord Odo Russell, on information of the British ambassador at St. Petersburg, states that "all was going on very well for the United States there."

What is the meaning of this statement? Are the two British ambassadors ignorant of the true state of the question at St. Petersburg as well as at London? Or are they in concert to deceive us?

The Russian minister's statement to me was explicit that he was informed (which means, of course, instructed) that your note of November 5 and the consultation of other Governments thereupon were intended only as means of enforcing the settlement of our personal reclamations at Madrid, which shows unmistakably how the question stands at St. Petersburg.

4. *France.*—All that Mr. Hitt could extract from the Duc Decazes consisted of evasive generalities, but in avowed opposition, however, to any intervention in Cuba.

I say evasive generalities, for while the Duc Decazes explicitly states, on the 22d of January, that the action of France will depend on the decision of Great Britain, but excuses his indefiniteness of explanations by pretended ignorance of the intentions of the Earl of Derby, the latter, on the 25th of January, declares in effect that France had already signified concurrence of view with Great Britain in her definite determination.

In conclusion, permit me to express the hope that you will regard this dispatch and the previous dispatches on the same subject in the light in which they are intended—that is, the execution of plain duty in this important relation.

I stand behind the players here and see the cards they are playing. It is not our game. We can do much with Spain, but it will have to be done on our own ground. We have no cause, in my belief, to expect aid from the European powers, not even from Great Britain. The problem rather is to work out our own policy in such way as to avoid obstructions on the part of those powers.

I have, etc., C. CUSHING.

Mr. Cushing to Mr. Fish.

[Telegram.]

MADRID, *March 29, 1876.*

FISH, *Secretary, Washington:*

I have explained to Calderon the nature of your 323, and prepared him to receive it in the right spirit. It can not be read to him in English. I might explain it to him in Spanish, but with risk of loss of effect for you as well as for him.

May I give him copy?

CUSHING.

Mr. Fish to Mr. Cushing.

[Telegram.]

WASHINGTON, *March 29, 1876.*

CUSHING, *Minister, Madrid:*

If requested, you may give copy.

FISH, *Secretary.*

Mr. Cushing to Mr. Fish.

No. 886.] LEGATION OF THE UNITED STATES,
Madrid, March 31, 1876. (Received April 18.)

SIR: On receiving your dispatch No. 323 and reflecting on its contents, my first conclusion was to seek to prepare the minister of state for the communication and to ascertain in what spirit it was likely to be received.

To this end it seemed to me convenient to preface by telling him what had been the inducement of your dispatch.

I accordingly sought and obtained a special interview, which took place by appointment at the private residence of Mr. Calderon y Collantes on the morning of the 29th instant.

I began by stating the reception of an important message from you to communicate to him, which had been drawn forth by what he had said to me on the 15th of January last, my report of which I should be glad to make him acquainted with in order to ascertain whether it was correct.

He assented, and I then placed in his hands a Spanish translation of so much of my dispatch No. 777 as relates to the subject (beginning at p. 3 and ending at p. 10), begging him to read it aloud and to deny or qualify if he found occasion.

He took the paper and read it aloud deliberately, saying repeatedly as he went along, "Exacto, exacto," and when he had finished, adding that it was a true and accurate account of what he had said at that interview and commending the fidelity of the report.

He subjoined, in passing, that all such of my reports of conversation at the ministry as had appeared in print had been scrutinized and found to be correct by the respective ministers.

I then said that you would be glad to sit by his side in person, as supposed in that interview, and respond to his friendly suggestion in the same spirit of friendship in which it was made, communicating to him your views of what, as "a statesman and a man of honor," you conceived to be fit to be done in Cuba in the common interest of the United States and Spain; and, as you could not do this in person, you desired to do it in writing, if it would be agreeable to him to receive a communication of considerate advice and kindly intentioned counsel.

He promptly replied that it would be entirely agreeable to him.

I said that the communication was of considerable length which my instructions permitted me to read to him, and that this involved the necessity of making a translation, in which something of the delicacy as well as the force of expression might disappear in passing from one idiom to the other, and that with dependence on the ear only for means of appreciation.

He then begged me to obtain leave to deliver to him a copy, which was the occasion of my telegram of the 30th on the subject, to which you have replied assenting thereto.

He mentioned the fact of a copy of his memorandum having been delivered to you by Mr. Mantilla, and said that the King's Government was meditating to do all which that memorandum indicated, and even more, in the direction of good government in Cuba.

Some reference was made to the apparent difference of opinion growing up among the Cubans in Europe as to the policy of mere devastation in Cuba pursued under the advice of the Cubans in New York.

Conversation then passed to the late bad news from Mexico, and thence to recent similar events in Ecuador, Colombia, Peru, the Argentine Confederation, and other countries of Spanish America, their frequent revolutions, pronunciamentos, and civil wars, and the apparent incapacity of the Spanish-American Republics to manage republican institutions or to maintain domestic peace, and to the question whether Cuba was capable of self-government, it being agreed between us that the Spanish Americans inherit all the vices, but not all the virtues, of their parent race in Europe.

But these points, incidental only to the matter in hand, it is unnecessary for me to report at length.

I am now having a copy made of your dispatch, to be delivered to the minister of state at an expected interview on the 1st of April.

I have, etc.,

C. CUSHING.

Mr. Cushing to Mr. Fish.

No. 911.] LEGATION OF THE UNITED STATES,
Madrid, April 19, 1876.

SIR: On the 12th instant the minister of state invited me to a special interview for the express purpose of conversing with me on the subject of your note of the 1st of March.

He said that he had prepared and should speedily send to me a note in reply, in the same cordial and friendly spirit in which your note was written; but that he desired by anticipation to communicate to me orally the substance of what he proposed to say in more deliberate manner.

He then took up your note and commented on its several suggestions seriatim substantially as in the written note annexed.

In addition to which, some practical points were touched upon, which it seems to me convenient to communicate in a separate and confidential dispatch, which will go by this or by the next mail.

I have, etc.,

C. CUSHING.

[Appendix B with No. 911.—Translation.]

Mr. Calderon y Collantes to Mr. Cushing.

MINISTRY OF STATE,
The Palace, April 16, 1876.

EXCELLENCY: I have read and meditated upon, with the profound interest which its importance merits, the note which under date of the 1st of March of the present year your excellency was pleased to communicate to me, and to which I have the honor of replying.

Before all I beg your excellency to be pleased to express to the Government, which you so worthily represent at this court, the satisfaction and gratefulness of that of His Majesty by reason of the tone, not merely benevolent but friendly, in which the instructions addressed to your excellency by Mr. Fish are conceived. This noble conduct on the part of the President constrains the Government of His Majesty to respond in all sincerity to the same sentiments of friendship and benevolence.

Passing now to examine the kindly suggestions of Mr. Fish relative to the actual situation of Cuba and to the means most adequate for putting a speedy and satisfactory end to it, I shall endeavor to give the solution in the same order as that in which the suggestions are presented.

First. The Government of His Majesty is in entire conformity as regards complying for its part with all the stipulations of the existing treaties, and giving to them a perfect, friendly, and liberal interpretation in all that which may be the subject of doubt or question.

Second. The Government of the King likewise proposes, because it believes it necessary, to change in a liberal sense the régime hitherto followed in the Island of Cuba, not only in its administrative but also in its political part.

Third. Not merely gradual and genuine, but rapid emancipation of the slaves, because the Government of His Majesty recognizes and unreservedly proclaims that slavery neither can nor ought to be maintained in any of its dominions, by reason of its being an anti-Christian institution and opposed to present civilization.

Fourth. The Government of the King finds itself in complete accord not only as to increasing but as to extending to the furthest possible limit all commercial facilities, and causing the disappearance of all the obstacles which to-day exist, and which hinder the rapid and free course of commercial negotiations.

The Government of the King ardently desires to see in the Spanish Senate and in the Congress of Deputies the representatives of the Island of Cuba, as those of Puerto Rico already are in both the colegislative bodies, enjoying in all respects equal rights and privileges with those elected by the Spanish Provinces.

Even effecting the pacification of Cuba exclusively by force of arms, it would not be in any way inexorable toward the conquered, nor does it propose to apply to them the rigor of the law of victory. It will endeavor, on the contrary, to attract the good will of all, to unite all the good sons of Cuba, to grant them rights which they did not enjoy before, and to join them to the common fatherland by the gentle yet strong ties of gratitude and affection.

Such, Mr. Minister, are the sentiments and the purposes of the Government of His Majesty, in perfect consonance with those which are expressed in the note of your excellency to which I have the honor of replying.

But, coming to the practical point and the development of those (sentiments and purposes), the impartiality and uprightness of your excellency and of your Government, of which such striking proofs have been and are now being given, will doubtless admit that not all of them can be realized at the present moment, as the Government of His Majesty would sincerely desire.

In so far as concerns the amnesty and the consequent restoration of property of all kinds embargoed from the insurgents and the refugees, no serious inconvenience stands in the way of its being conceded forthwith, provided they previously submit themselves to the Government of the King.

It is materially impossible to hold elections for senators and deputies in the actual state of insurrection, as it has been so in Spain itself in the provinces wherein the civil war raged; but the Government of His Majesty contracts from henceforth the solemn engagement to command that they take place so soon as the island be pacified, or the insurrection be at least reduced to insignificant proportions.

Without fear that anyone will deny it with proper grounds therefor, I am able to assure you that, but for the insurrection, there would not now have been for some time a single slave in the Island of Cuba; but at the present time, the negroes and mulattoes constituting one of the principal elements of the insurrection, their freedom would be, even in the judgment of those most opposed to slavery, a very grave peril, not only for Spanish rule and for all the Spaniards and Cubans faithful to the metropolis, but also for the whole white race of the island.

The Government of His Majesty, cherishing the well-grounded hope of accomplishing within a brief period the pacification of Cuba, or reducing the insurrection to unimportant limits, is now engaged in preparing the means of replacing, without injury to agriculture, slave labor by free labor, whereby all the nations which maintain commerce with the Island of Cuba will be the gainers, because that commerce would be but poorly nourished did the soil cease to produce through lack of cultivation.

I have set forth with perfect sincerity the desires and the views of the Government of His Majesty, thus reciprocating, as I should, the friendship of the Government of the Union and its loyal purposes. I desire to know the opinion of the latter respecting the solutions and the occasion of realizing them, which I have just indicated; and I conclude by reiterating to your excellency my earnest wish to go on in perfect accord with the Government of the Great Republic in a matter wherein, when examined with true elevation and without prejudice, there is a common and legitimate interest; that is to say, the peace of Cuba, and a government prudent, generous, and liberal in all its proceedings.

I avail, etc.,

FERNDO. CALDERON Y COLLANTES.

Mr. Cushing to Mr. Fish.

No. 914.] LEGATION OF THE UNITED STATES,
Madrid, April 19, 1876.

SIR: What I have to add to the contents of my No. 911, of this date, consists of a few points of practical suggestion, arising out of my interview with the minister of state.

You speak in your note of modification of existing treaties. Mr. Calderon y Collantes says he is perfectly ready to act on any modification you may propose. Spain will receive in the best disposition any proposal for the amendment of the treaty of 1795 which may be presented by the United States.

COMMERCIAL ARRANGEMENTS.

Mr. Calderon y Collantes says Spain would be but too glad, either by treaty or by concerted legislative arrangements, to enlarge the scope or facilitate the prosecution of the commercial intercourse of the two nations. The great solicitude of Spain at this time is to cultivate her material interests. She invites negotiation on the subject with the United States.

AMNESTY.

Mr. Calderon y Collantes says the King's Government would cheerfully grant amnesty to the rebels in Cuba. It is not actuated by the slightest vengefulness of spirit. Indeed, in its dealing with the Carlists, its mercifulness of temper is the subject of vehement reproach on the part of the opposition. But how, he says, can the Government force an amnesty on the negro incendiaries and assassins in Cuba? Can the Government restore his property unconditionally, to be used by him from his refuge in New York in procuring the conflagration of the property and the assassination of the persons of the innocent and helpless noncombatants of the Island of Cuba?

Such is the dilemma he propounds to me in this relation.

Now, what shall I say to the minister of state on these three critical points?

As to the question of modification of existing treaties, or negotiating for commercial advantages, my hands are tied by the peremptory tenor of your dispatches on this point, repelling all idea of treaty negotiation with Spain.

But, how shall we proceed in the beneficial modification of treaties, or the acquisition of new commercial advantages, without a mutual understanding; in a word, without either treaties or agreed legislative enactments in the nature of treaty?

It occurs to me that, now that the two Governments have at length for the first time frankly and definitely considered the text of the treaty of 1795, and that the question of its application has been reduced to its due proportions by your No. 281 of December 27, 1875, and that all controversy on that point is in the way of being satisfactorily terminated, you may possibly be less disinclined to enter into new treaty negotiations with Spain. May not that be inferred from these heads of your note of March 1? I hesitate, however, to act in this direction without specific instructions, and therefore can not take up these intimations on the part of Mr. Calderon y Collantes.

Be it remembered that Spain has never failed to treat in the most friendly spirit with or in behalf of the United States, as witness the treaties of 1779, 1783, 1795, 1802, 1819, 1834, and 1870. She thinks the treaties of 1795, 1819, and 1870 were eminently of this amiable character.

Be it remembered also that all our troubles with Spain have been incidents of the delirium tremens of anarchy and revolution which seized upon her in 1868, involving civil war in Cuba, in the northern provinces, indeed all over the peninsula. With recovery from that craze has come a steady course of reparation as regards the United States. Why should we not avail ourselves of such inviting circumstances?

In like manner my hands are tied and my lips are closed on the subject of amnesty, which so far as concerns us involves the single question whether the United States, while so constantly striving to influence Spain, can and will do anything to influence the rebels of Spain.

All Madrid believes that, faulty as has been the administration of Spain in Cuba, most of the maladministration has been the logical effect of the factious, ungovernable, and traitorous spirit and conduct of the Cubans themselves, rebellious, as all Spaniards are prone to be, by their hereditary national character.

Thus it is alleged that no repressive measures would ever have been adopted in Cuba but for the frequent rebellions or attempted rebellions there in times of complete order, tranquillity, and prosperity, as in 1823, 1829, 1837, and 1854, including the infamous acts of Narciso Lopez in twice recruiting armed foreign adventurers to invade the island, the worst of all forms of treason.

In fine, as every American bears witness after seeing both, the Cubans are Spaniards, with all the faults of Spaniards in aggravated degree; and whereas discontent is the habit in Spain, and violence the ordinary manifestation of discontent—whereas in Spain opposition parties systematically pursue the practice of quarreling with any and all Governments, however well-intentioned these may be, and deliberately provoking measures of repression in order to have pretext to declaim against oppression and tyranny—so the Spaniards say it always has been in Cuba.

However this may be, it certainly makes the blood run cold to read letters like that of the American lady, Mrs. Julia M. Garcia, narrating the sack and burning of her plantation and the murder of her servants by one of the negro bands of ———. Assuredly, indiscriminate incendiarism and assassination, applied to the property and persons of innocent and peaceful persons, noncombatants, is not war.

So, in reading the manifestations of ——— in the Revolucion, the Independencia, and the Sun, and contemplating their base calumniation of the President, yourself, and the Government of their asylum, and the cowardly malignity and cold-blooded atrocity of the policy of systematic incendiarism and assassination which constitutes their theory of independence in Cuba, one is prone to ask whether these men are not mere wild beasts, fit only to be shot down at sight to rid the world of such loathsome and hateful monsters.

Indeed, the conduct of the Cubans and of their directors in New York has had the mark of infamy indelibly stamped upon it by the expressions contained in the last annual message of the President.

Oftentimes, it is true, in the history of rebellions, especially as they become prostrated or hopeless, the worst traits of human wickedness appear to become developed, as in the plan for burning or poisoning

New York conceived by some of the Confederates, and as in the horrors perpetrated by the Communists of Paris.

Spaniards, also, are among the worst of rebels. They do not stop to draw the line between political opposition and rebellious conspiracy, to estimate the morality of the means employed to gratify their feverish thirst for office, or to calculate the dynamic relation of the means to the proposed end.

We in the United States would think it strange enough to see a disappointed candidate for a ministerial portfolio or a foreign mission undertake to get up a rebellion against the Government, or to invade it in arms at the head of a gang of foreign miscreants and ruffians recruited in Canada or Cuba. Yet that is the way they do things in Spain.

In short, these men are Spaniards, in whose character the most flagitious sentiments are seen to be most prominent, while behind is a fund of generosity and honor.

Their present line of action is abominable as to morality, while it is stupid suicide as to politics. It is abominable to burn the property and murder the persons of peaceful planters in Cuba in order to weaken Spain; it is suicide to pursue the policy of systematically endeavoring ing to destroy Cuba in order to spite Spain.

That destruction involves irreparable loss to the United States as well as Spain.

But are ——— and ——— so bad as they seem, and as their acts indicate? On the face of things it is hard to see in what respect Thomassen or Keith, he of the infernal machine, is a worse man than ——— or ———.

Still, it seems impossible to believe that they can be wholly insensible to influences of honor and of reason. In their case, as in other analogous cases, it would seem that a sort of mental alienation supervenes to blind men to the true character of their acts.

Are these men, then, or are they not, amenable to influences of reason and humanity, addressed to them by the United States?

Surely, if they are not, Spain may well think it is of no use for her to seek to influence them by acts of gratuitous generosity, even to oblige the United States.

These considerations are of the very essence of the question of amnesty as between the United States and Spain.

You have touched on this point once or twice, but so lightly as to leave me in doubt whether it is right or proper for me to enter into the question with the minister of state; which compels me to be silent at the very point where explicitness of conversation might efficiently promote the desires of the United States for the pacification of Cuba.

Submitting these views to your better judgment,

I have, etc., C. CUSHING.

Mr. Fish to Mr. Cushing.

No. 383.] DEPARTMENT OF STATE,
Washington, June 16, 1876.

SIR: Upon reading your No. 956[1] of the 20th of May, inclosing an extract from the Independencia, of New York, professing to contain a "programme" of the revolutionists in Cuba, with your comments as to the extremities to which the insurgents have proceeded, I am reminded

[1] Mr. Cushing's No. 956 incloses a programme of the revolutionist junta in New York, and comments upon its effects in Spain. It does not seem to be responsive to the resolution.

of your two dispatches, Nos. 911 and 914, both dated April 19, 1876, informing me of the communication to the minister of state of instruction No. 323 of the 1st of March.

You will remember that this instruction was addressed to you because the minister of state was pleased to invite a frank statement concerning the precise thing which this Government would advise or wish Spain to do, pursuant to which intimation I frankly informed you of the views of this Government as to what course might be adopted with a view to the restoration of peace in Cuba.

On almost every occasion heretofore, when complaints have been made of the damage to this country and to all countries having relations with Cuba, growing out of the insurrection, or when friendly suggestion has been made, as in this case, substantially the same answer has been returned, namely, that the insurrection was about to be suppressed; and when that had happened, then, but not before, reforms which were admitted to be required would be inaugurated and measures necessary to the peace and prosperity of the island adopted. The insurrectionists, on the other hand, have been unwilling to rely on these assurances or to lay down their arms. Thus things have proceeded, and the insurrection is no nearer to suppression now than years ago, and the needed reforms as distant as some years since.

It has been averred that certain high authorities in Spain did not at first object to a show of revolution or revolt in Cuba, as such a condition of affairs gave ready excuse for increased taxation and new burdens. Of this I say nothing and express no opinion; but it seems to be indisputable that the determination of Spain to do nothing by way of reforms, nor to aid in any improvement in affairs until the insurrection had been suppressed, has prevented its suppression and virtually prevented the introduction of any better state of affairs in the island.

With, therefore, a continuation of the same policy on the part of the authorities of Spain as is foreshadowed by the minister of state in his communications to you touching my instruction of the 1st of March, and in other quarters, and with the determination of the insurgents, if such can be said to be foreshadowed in this extract from the Independencia, or if the same be genuine, with the extreme views of the two parties, neither willing or intending to yield to the other, and with the want of power or ability of either to coerce the other, there seems little hope that anything is soon to be expected in the interest either of good government in Cuba or that will lead to peace and prosperity in the island.

I am, etc.,

HAMILTON FISH.

Mr. Cushing to Mr. Fish.

No. 1027.] LEGATION OF THE UNITED STATES,
Madrid, July 10, 1876.

SIR: I received some time ago a letter from the American Peace Union, inclosing an address to the King to propose a board of international arbitrators to settle the little misunderstanding between the "nation" of Spain and the "nation" of Cuba, to which I have just now snatched a moment to make response. A copy of the correspondence is annexed.

I have, etc., C. CUSHING.

[Inclosure 1 with No. 1027.]

Mr. Love to Mr. Cushing.

PHILADELPHIA, *January 19, 1876.*

RESPECTED FRIEND: The Peace Society of America has passed the resolution inclosed and has to request that you favor us by presenting or forwarding it to the court of Spain, that the proposed matter may be considered there as well as at our capital and in Cuba, as we have forwarded duplicates to both places—and I believe President Grant favors the proposition.

We have had this written in Spanish for Spain and Cuba, and we trust it will receive proper attention.

We are well convinced that this course will be popular and profitable, and with the highest appreciation of your services, and thanking you in advance for the favor asked,

I am, etc., ALFRED H. LOVE,
President of the Universal Peace Union, American Branch.

[Inclosure 2 with No. 1027.—Translation.]

PROPOSED ADDRESS OF THE PEACE SOCIETY TO THE KING OF SPAIN.

At the ninth anniversary of the Society of Peace of Pennsylvania, branch of the Universal Peace Union, celebrated in the city of Philadelphia the 30th of November, 1875, the following conviction was unanimously adopted, and it was ordered that it be sent to the King of Spain, to the President of the United States, and to the powers of Cuba, with the hope of its adoption by all:

"We are convinced that the principle of national and international arbitration may be made popular and appropriate for terminating all differences between nations, and that if the motives of disturbance between Spain and Cuba were submitted to a tribunal of wise and conscientious arbitrators they would be adjusted with comparatively small cost and delay, to the mutual satisfaction and great benefit of both countries."

ALFRED H. LOVE,
President of the Universal Peace Union,
No. 215 Chestnut Street, Philadelphia, United States.

PHILADELPHIA, *January 1, 1876.*

[Inclosure 3 with No. 1027.]

Mr. Cushing to Mr. Love.

MADRID, *July 7, 1876.*

RESPECTED FRIEND: I have had under consideration your esteemed favor; and, cordially concurring as I do in appreciation of the laudable object you have in view—that is, the pacification of Cuba—and earnestly as I have myself labored in the same spirit on various occasions, I regret that it is not in my power to deliver to the King of Spain the address which you inclose, suggesting a board of international arbitration for the settlement of the contest between him and his insurgent subjects in Cuba.

In the first place, I have no right, as envoy and minister of the United States, to make any political communication to the King. That is a privilege reserved exclusively to ambassadors. To overstep the line of diplomatic rule and usage in that respect would not only expose me to censure, but would be prejudicial to the contemplated object.

In the second place, I have no right to make official communications of this nature to the minister of state, with whom alone it is competent for me to treat, except on instructions from my Government.

Meanwhile, the object of your proposed address to the King, as appears by documents communicated to Congress, with which you are probably acquainted, has been the subject of continual correspondence here, in obedience to specific instructions of the Department of State, which define and limit my rights and duties in this respect.

For these reasons I have felt myself constrained to adopt in your case the rule of conduct observed in all new matters presented to me—that is, to refer the subject of our correspondence to the Secretary of State of the United States.

Permit me, in conclusion, to make a single observation respecting the tenor of your proposed address to the King of Spain, and this not in the sense of criticism, but of explanation.

This address starts from the premises of the general utility of international arbitration. You will see, by glancing at the third chapter of the volume which accompanies this letter, that my own advocacy of international arbitration is as earnest as that of the Peace Union.

But your address proceeds to assume that Spain and the insurgent Cubans are in the relation of foreign nations one to another. To the contrary of this, as the last annual message of the President of the United States conclusively demonstrates, such is not either in fact or in right the present condition of the Cubans. A secession insurrection exists in Cuba, but not in a state to be recognized by the United States (or by other Powers) as an independent, or even belligerent, nationality.

Moreover, the question which shall yield to the other, and on what terms—insurgent subjects or their sovereign—the issues of a war of independence—is one of the questions on which arbitration is impossible.

Could President Lincoln have entered into international arbitration with the persons in arms in the Southern States on the question of the dissolution of the Union? Clearly not; nor, I think, did the "Peace Union" or any other friends of peace advise such a course on the part of our Government. We did not regard the Southern States as a nation, although they had been recognized as belligerents by foreign powers and had infinitely higher pretensions to be considered a nation than the comparatively handful of insurgents in Cuba. Nor has Spain yet consented to regard the insurgents in Cuba as a "nation." Of course she is not likely to enter into an agreement with them to arbitrate the question of the secession of Cuba from Spain.

Let me ask, on the other hand, what is the relation of the "Peace Union" to the insurgents in Cuba? Have they listened to your suggestion of an arbitration? If you, the friends of peace, can exert any influence in that quarter, you will be performing a great and glorious work, in the interest alike of Spain and of Cuba.

I remain, etc.,

C. CUSHING.

Mr. Cushing to Mr. Fish.

No. 1029.] LEGATION OF THE UNITED STATES,
Madrid, July 11, 1876.

SIR: Will you permit me to make some observations of a consolatory tendency in reference to the nonsuccess of your earnest efforts to meliorate the condition of things in Cuba?

1. You encounter, in the first place, the indisposition of either party to the contest in Cuba to listen to the counsels of wisdom and friendship. It is the very predicament described by a late writer in the following words:

> There are conjunctures in history in which reasoning and the attempt at persuasion fail. Where opposition is irreconcilable, where each party is striving heart and soul for an object, which the other looks upon as ruin and ignominy to himself, there can be no arbitrament but force. The ruler must show his power to rule, the subject must show his power to win independence.

Is not this true? Is there any example in history in which rebellions have yielded to reason—when either the sovereign or the rebellious subjects could be persuaded to cease from strife, until after the one or the other party had been vanquished?

We in the United States have possessed parliamentary institutions for more than three centuries—not one only, as might be inferred from the rejoicings of the late Fourth of July. We think we are—we are—imbued with all the instincts of order, peace, and good government.

Now, would we of the North have listened to any suggestion from abroad to desist from the effort to put down secession by force of arms? Would our insurgent fellow-citizens in the South have been persuaded to lay down their arms by any promises, assurances, or even concrete acts on the part of the Government of the Union?

Again, going back to our own insurrection against Great Britain, would any proposition of hers, or even enacted measures for better administration of the colonies have influenced us to make peace? Or could Great Britain yield to us until defeated in all quarters, and completely disheartened, by the combined forces of the United States, France, Spain, and the Netherlands?

With enlightened zeal you have labored thanklessly for the peace and welfare of Cuba and of Spain herself, and if you have not been able to effect all the good you desire, it is only because you have had to encounter impediments of moral impossibility in the nature of things.

2. In the second place, my residence in Spain has enabled me to appreciate the true cause and character of maladministration in Cuba. It is that the governors are incapable of conducting and the governed equally incapable of receiving good government. They are all Spaniards alike, as General Prim so often said, whether you call them Peninsulars or Cubans. And (to say nothing of the colored population) it is not the best of the Spaniards, Creole or Peninsular, which constitutes the population of Cuba.

Now, has there been maladministration in Cuba? So there has been in Spain herself. Have there been rebellions in Cuba, guerrilla warfare, burnings, sacking of towns, military executions, deportations, embargo of private property, banishments, suspension of suffrage, arbitrary domination of captains-general? So all these things have been occurring in Spain. She has had naught else for more than sixty years but alternations betwixt anarchy and despotism. The few periods of comparative, but transient, tranquillity she has enjoyed during the reign of Queen Isabel were due to the mere usurpation of two great generals, Narvaez and O'Donnell, to whose administrations of the sword men look back now as to the halcyon days of Spain. Since the dethronement of Queen Isabel—that is, during the very period of the civil war in Cuba—there has not only been civil war in Spain, but, simultaneous therewith, a rapid succession of provisional and experimental governments, each destitute of inherent stability, and every one of which subsisted only by means of irresponsible dictatorships, except that of King Amadeo alone, who fell simply, as men say, because he was the only man in Spain scrupulously faithful to his oath and obstinately adhesive to the constitution of the country.

And yet, constitutionally honest as he was, his ministers betrayed him and assassins (not yet punished) fired on him on a bright moonlit evening in one of the most frequented and brilliantly lighted streets of Madrid. Possibly if Prim had not been assassinated in the street (by men, they also not yet punished), Spain might have been saved from her extremest days of misery, the cantonal insurrection, but that is doubtful, since the misfortunes of Spain and of Cuba are conditions of the national character, as manifested alike in Spain and in all Spanish America.

For, let me repeat, the governors and the governed, all the same in race, and with defects aggravated in the latter by tropical life and by association with slaves, are at least equally to blame for the calamities of Cuba.

In fine, looking at the subject from the point of view of the interests of the United States, which alone is of account in the face of a civil contest where both parties are deaf to the counsels of friendship and to considerations of sympathy and humanity, it seems to me that we have much to lose and nothing to gain by compromising ourselves in the matter of Cuba, it being superabundantly evident that, whether as to

Lopez and his companions laboring professedly to betray their country to a foreign nation for the promotion of slavery, or in the case of Aldama and his associates, laboring to betray it to the same nation for the gratification of personal resentment and ambition, they all have but one thought as respects us, namely, to make a cat's-paw of our Government, while ready to emulate, on the earliest possible opportunity, the "sublime ingratitude" of Schwartzenberg.

I have, etc., C. CUSHING.

Mr. Fish to Mr. Cushing.

No. 401.] DEPARTMENT OF STATE,
Washington, August 1, 1876.

SIR: Your dispatches Nos. 1025,[1] 1026,[1] 1027, 1028,[1] 1029, 1030,[1] 1031,[1] 1032,[1] 1033,[1] and 1034[1] have been received.

With reference to No. 1027, inclosing a copy of the correspondence between the American Peace Union and yourself on the subject of a board of arbitration between Spain and the insurgent Cubans, I have to state that your course as therein set forth is approved.

I am, etc.,

HAMILTON FISH.

AUSTRIA.

Mr. Fish to Mr. Orth.

No. 38, of November 15, 1875, and telegram of December 13, 1875. (Same as No. 756, of November 15, 1875, and telegram of December 6, 1875, to Mr. Washburne, pp. 98, 99.)

Mr. Orth to Mr. Fish.

No. 75.] LEGATION OF THE UNITED STATES,
Vienna, December 14, 1875.

SIR: This morning I received the following telegram, dated Washington, December 13, 1875:

Proceed as instructed in No. 38.

Accordingly, I repaired to the office of the imperial royal ministry for foreign affairs to seek an interview with Count Andrássy, but learned from Baron Hofmann, "sections chef," or assistant secretary of foreign affairs, that Count Andrássy was somewhat indisposed; that he is now in Budapest, but is expected to return to-morrow. I informed Baron Hofmann that I was instructed by the President to make a confidential communication to the minister of foreign affairs, and he replied that I could, if it suited my convenience, have an interview for such purpose on Thursday, at 12 o'clock, with Count Andrássy, or, should the Count still be indisposed, then with Baron Hofmann. I shall, therefore, on next Thursday, as instructed, communicate "instruction No. 266 to Mr. Cushing, United States minister at Madrid," contained in your dispatch No. 38, of date November 15, 1875.

I have, etc., GODLOVE S. ORTH.

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[1] Not printed.

Mr. Orth to Mr. Fish.

[Telegram.]

VIENNA, *December 16, 1875.*

Instruction communicated. Answer next week. Probably unsatisfactory.

ORTH.

Mr. Orth to Mr. Fish.

No. 78.] LEGATION OF THE UNITED STATES,
Vienna, December 16, 1875.

SIR: In my dispatch No. 75 of day before yesterday I stated that my interview with the Imperial Royal minister of foreign affairs was arranged for this day at 12 o'clock. I accordingly repaired to the foreign office, where I met Baron Hofmann, who informed me that Count Andrássy had returned from Budapest still somewhat indisposed, but that he was, by previous arrangement, having a consultation with the ambassadors from Germany and Russia with reference to the proposed action of the three powers in the matters connected with the insurrection in Bosnia and Herzegovina; that these matters, in which the Austro-Hungarian Government had such direct and immediate interest, would probably occupy the entire attention of Count Andrássy for several days; that for these reasons the Count regretted very much that he could not receive in person the communication I was instructed by the President to make to his Government, and that, in order to avoid further delay in receiving such communication, he had authorized Baron Hofmann to receive the same for him. Thereupon I informed Baron Hofmann that the communication I was instructed by the President to make to the Austro-Hungarian Government had reference to the unfortunate condition of affairs now, and for several years past, existing between the Government of the United States and that of Spain, growing out of the insurrection in the island of Cuba.

That such contest had now continued between Spain and her colony for the period of about seven years, characterized by violations of the rules of civilized warfare, by pillage, by wanton destruction of property, and was threatening the desolation of a large and most fertile island, in close proximity to our own shores, and in whose peace, prosperity, and commerce the people of the United States had a most direct and immediate interest.

That the unhappy contest thus long waged between Spain and the insurrectionary forces in Cuba still continues unabated and with no present prospect of a termination.

That during the years of this conflict citizens of the United States had frequently suffered in person and estate from the lawless acts of the parties engaged therein, and that the Spanish Government, after frequent representations on the part of the Government of the United States, had not been able, or willing, to compensate such citizens for losses incurred and damages sustained, nor could the Spanish Government give any reliable assurance of immunity from such acts in the future.

That the Government of the United States has no ulterior or selfish motives in this matter, and no desire to take advantage of the distracted internal condition of Spain, but, on the contrary, it is the earnest desire of the President that there should be "a termination of the

disastrous conflict in Cuba by the spontaneous action of Spain, or by the agreement of the parties thereto."

After this preliminary statement to Baron Hofmann, I proceeded to read to him the instruction No. 266, of date November 5, 1875, addressed by the Secretary of State to Mr. Cushing, United States minister at Madrid. The Baron listened with marked attention to the statement and "instruction," taking notes of the principal points contained in each.

He then remarked that, personally, he takes a lively interest in everything pertaining to the Government and people of the United States, and desired me to say to the President that the Austro-Hungarian Government felt a continuing friendship for that of the United States, and everything pertaining to its honor and prosperity, and that I should convey to the President the thanks of this Government for the frank manner in which he had caused to be brought to its attention the delicate and critical relations now existing between the Government of the United States and that of Spain, and expressing a sincere hope on the part of his Government that the friendship between the United States and Spain might not suffer even temporary interruption in consequence of the causes arising from the present unhappy state of affairs existing between Spain and her ancient colony.

I thereupon ventured to suggest that it might be consistent with the views of the Austro-Hungarian Government, in the interest of humanity and of peace, and in the spirit of that good-fellowship so long existing between Austria and Spain, to bring to the attention of the latter Government the importance to her of the termination, of her own volition, or with the concurrence of her insurgent subjects, of a contest already waged for seven long years, and thus far without any reasonable prospect of being ended by the further effusion of blood or waste of treasure.

The Baron replied that from the communication I had made he felt that he fully comprehended the present position of the Government of the United States in this matter; that he should make a full brief of the case for the consideration of Count Andrássy and the Imperial and Royal ministerial council, but should Count Andrássy desire fuller information he would not hesitate to apprise me and request a future interview for that purpose, to which I rejoined that it would afford me pleasure at any time to comply with Count Andrássy's wish in this respect.

That, occupying a subordinate position himself, he could not undertake to say what might be the view of the Austro-Hungarian Government in reference to my suggestion, but he might be permitted to add that inasmuch as the position of the Government of the United States, as set forth in the instruction No. 266, had been brought to the attention of the Spanish Government by Mr. Cushing, it was not improbable that the Spanish Government, through its minister at Vienna, would also bring the matter to the attention of the Austro-Hungarian Government, and using as he said, "a common expression," there are generally "two sides to a question." That he meant, however, by this expression only to say that his Government might, out of deference at least to the Government of Spain, desire to hear from its representative before forming any judgment or expressing any opinion upon a matter so gravely affecting the future peace of both countries.

He added further, that it was at all times a most delicate matter for one government to volunteer suggestions to another regarding its action, with reference to which the "suggesting Government" had no immedi-

ate interest. That, as I was well aware, the Austro-Hungarian Government "had its hands full" in the present troubles on her southern border (alluding to Bosnia and Herzegovina), and that she might deem it the part of wisdom to refrain from even a suggestion in which she had only an interest in common with other Governments.

That these were to be taken by me only as his own ideas, and not as indicating what might be the views of his Government after a more thorough examination of the question in all its phases, but he desired especially to impress me with the fact that the Austro-Hungarian Government entertained for the Government of the United States the utmost respect and friendship, with best wishes for her continued peace with the other nations of the world, and a continuance in that career of prosperity that has thus far distinguished her history, and that I should, at as early a day as practicable, be informed in writing as to the conclusion to which his Government should arrive in the premises.

I have, etc.,

GODLOVE S. ORTH.

Mr. Orth to Mr. Fish.

[Telegram.]

VIENNA, *January 12, 1876.*

Andrássy requests copy of Cuban dispatch. Shall I comply?

ORTH.

Mr. Orth to Mr. Fish.

No. 90.] LEGATION OF THE UNITED STATES,
Vienna, January 13, 1876.

SIR: I have been waiting patiently for the reply of the Austro-Hungarian Government to the note on the Cuban question, which I was instructed to bring to its notice, and which reply in writing was promised at an early day, as I advised you in my No. 78.

On the 8th instant I received a copy of the Daily (London) Telegraph, in which I found a telegram sent from this city on the 4th instant, relating to this subject, which is attached hereto.

This telegram speaks in a tone of official inspiration, and mentions facts which its author could hardly have divined. My first impulse was to bring it to the attention of the ministry of foreign affairs, and learn whether it be true as stated that "the Austrian Government * * * will not reply to the long American dispatch, which was only read to the Austrian minister for foreign affairs," etc.

Upon reflection, however, I deemed it the wiser course to await the further action of the ministry.

In this connection I desire to state that Count Andrássy is still at Budapest in conference with the ministries of the two Governments of Austria and Hungary, as advised in my No. 88, and will probably remain there two or three weeks, as there is at present no immediate prospect of a settlement of the difficulties now engaging their attention. And in addition to this, the "Eastern question" is so constantly engrossing his attention that it is very doubtful whether I can soon obtain a personal interview with Count Andrássy upon this subject.

Hearing nothing from the Imperial and Royal ministry on the subject of the Cuban note, I repaired yesterday to the foreign office and had a

somewhat lengthy interview with Baron Hofmann. I commenced the interview by stating that for certain sufficient reasons the President would be pleased to receive an answer as promised from this (the Baron's) Government, with reference to the note I had the honor of reading to him at our last interview. The Baron replied by stating that the attention of Count Andrássy had been, and still is, so thoroughly engrossed with important matters—the Eastern question and differences in Hungary—immediately affecting his own Government that he had not been able as yet to consider the matter I had brought to his attention. That the Count was very desirous of having a copy of the Cuban note so that he could carefully examine it before giving any answer. To which I responded that my instructions merely authorized me to read it to him. The Baron then proceeded, stating that after our last interview he had an interview with the Spanish envoy, the Duke de Tetuan, on the subject, who informed him that the Spanish Government was exceedingly anxious to suppress the revolt in Cuba, and was only awaiting the final overthrow of the Carlist insurrection to send an armament of sufficient strength to Cuba to restore tranquillity to the island.

The Baron further stated that whatever might be the views of his Government on this question, they were not prepared to take the initiative, and hence had soon after my last interview entered into correspondence with the Governments of Great Britain, France, Germany, and Russia for the purpose of ascertaining their views and intentions, and had also fully communicated their action in the premises to their envoy at Washington. That thus far they had not received any response from either of the Governments of Great Britain, France, or Russia, letting me infer that the German Government had made a response, although he (the Baron) did not expressly say so.

At this point I called his attention to the telegram in the London Telegraph which seems to state with the positiveness of authority that no answer would be given by the Austrian Government. After examining the telegram very attentively, the Baron with some warmth replied that it was untrue that such was the position of his Government. He reiterated that his Government would not take the initiative, and especially did they desire to know the views of Great Britain, which, of all European Governments (with the exception of Spain), was most directly and immediately interested in the Cuban question.

Again he expressed the desire of Count Andrássy to have a copy of the Cuban note, when I replied that I would advise you by telegram, as I did soon after leaving the foreign office, of such desire, and be governed by your direction in the premises.

I have, etc., GODLOVE ORTH.

[Inclosure 1 in No. 90.—Extract from the Daily (London) Telegraph, January 5, 1876.]

VIENNA, *January 4.*

The cabinet of Madrid learned in the middle of December, from a confidential quarter, the contents of the circular note of the United States Government to the European Powers relative to Cuba. It thereupon instructed its representatives abroad to explain to the Governments to which they are accredited that the Cuban question was not one only of American but of European interest. Complications between America and Spain might have incalculable consequences for Europe. In the first place, they would encourage the Carlists to make a prolonged resistance, and revive the hopes of the Federalist Republicans and Socialists in Spain. The Austrian Government received these declarations in a friendly manner, and will not reply to the long American dispatch, which was only read to the Austrian minister for foreign affairs, and which, moreover, not only repudiates any intention of annexing Cuba, but in *reality contains no* definite conclusions.

Mr. Fish to Mr. Orth.

[Telegram.]

WASHINGTON, *January 14, 1876.*

ORTH, *Minister, Vienna:*

Copies two sixty-six not furnished other Governments, nor communicated here. Vienna papers first published purport after your interview. Give information on any point, but prefer at present not to give copy.

FISH, *Secretary.*

Mr. Orth to Mr. Fish.

No. 91.] LEGATION OF THE UNITED STATES,
Vienna, January 17, 1876.

SIR: On Saturday morning, the 15th instant, I received from you the following cable telegram, which I have translated as follows:

Copies two sixty-six not furnished other Governments nor communicated here. Vienna papers first published purport after your interview. Give information on any point, but prefer at present not to give copy.

This afternoon I called at the foreign office, and finding Count Andrássy still absent at Budapest, I informed Baron Hofmann that I had received an answer from you and that you "preferred at present not to give copy" of No. 266. The Baron made no special remark further than to say the copy was desired by Count Andrássy rather than by himself.

With reference to that portion of your telegram which says, "Vienna papers first published purport after your interview," I will state that some of the papers of this city during the first week in this month published extracts from some Parisian paper indicating that our Government had addressed a note to the several Powers in Europe on the subject of Cuba without giving any very distinct idea of the contents of such note; that on the morning of the 5th instant the Presse, of this city, which is understood to be in the confidence of the ministry here, published the following telegram from London, dated January 4—

Reuter's Agency reports from New York that in the note of the Government of the United States addressed to the Powers relative to Cuba, the union of Cuba and Puerto Rico under one Spanish Governor-General is proposed—

and on the same day it had a leading editorial, based apparently upon the foregoing telegram, in which, however, it alludes, at least incidentally, to the note—doubtless meaning No. 266—and gives its views at length upon the Cuban question.

This editorial assumes more importance than it otherwise would from the fact, as stated above, that it is said to enjoy the confidence, and hence may be regarded as somewhat reflecting the views, of the ministry.

I attach hereto the original, as well as translations of said editorial and also of said telegram.

I have, etc., GODLOVE S. ORTH.

[Inclosure 1 in No. 91.—Translation from the Presse of Wednesday, January 5, 1876.]

NORTH AMERICA AND CUBA.

North America labors vigorously and incessantly to make the Cuban question an international one, and to elevate it to the position of a burning one before the Spanish arms can succeed in making it disappear from the world. To-day it is announced by telegram from New York that the note of the Government of the United States to the Powers relative to Cuba proposed the union of Cuba and Puerto Rico under one Spanish governor-general. The European diplomacy, which was enlightened with the hearing of the extraordinarily long American document—a copy of the same was not left—might be not disagreeably astonished to learn what actually might be the small meaning of the long discourse. The omission of every conclusion in the document of Mr. Secretary Fish was until now everywhere remarked; he had hitherto excused the European Governments from the duty of giving an answer to the Washington Government, and the Madrid Government did not this time require, as with the message of President Grant, to answer with a formal memorandum. Substantially, the long and short of the American note was to the effect that the insurrection in Cuba must come to an end. It was careful to represent, in constantly recurring phrases, that no individual interest of any kind had actuated the United States, who positively had not the least thought of appropriating the Pearl of the Antilles.

Here and there the idea is brought forward that the creation of a certain autonomy for Cuba was to be recommended, but as to a formal proposition to the Powers to unite Cuba and Puerto Rico under one Spanish governor-general, it is, to the best of our knowledge, not mentioned. Such a proposition would not have the slightest prospect of success either with Spain herself or with the Powers. In the first place, it does not appear how such a union of the two Antilles would solve the question for which alone the Washington Government is desirous of interesting the Powers, nor how it could produce an end to the insurrection in the Island of Cuba. Then all European powers, without exception, would reflect twice before they would with such a proposition so deeply interfere in the internal affairs of a foreign nation. But as regards Spain herself, it is exclusively the affair of her army, in the first place, fully to suppress the insurrection in Cuba, and the affair of the future Cortes to durably regulate the relations between the colonies and the mother country. Still less than any one of the former Governments would that of King Alphonso permit laws to be dictated to it from abroad in an affair so eminently national.

The European Powers are at the present time accurately informed what standpoint the Spanish Government occupies in opposition to the arguments of the American Government. It was easy for the representatives of Spain abroad to reply to the pretense of the Washington Government that the Spanish war force would find it impossible to subdue the insurgents in Cuba, by producing the declarations in Grant's message that these insurgents were without everything which could entitle them to recognition as belligerents. When the insurgents to-day, after six years' efforts, were unable to occupy any other territory other than forests without roads, and unfruitful and unhealthy swamps, and not a single locality having more than 200 inhabitants, thus it becomes manifest—and herein the Spanish diplomacy accredited to the foreign Powers successfully weakens the chief argument of the Government at Washington—why, according to the statistical proofs, could both the State revenue of Spain from Cuba, as well as the commerce of America with the Island, constantly and very largely increase in spite of the insurrection? On the other hand, Spain raises the simple question why just now as order is being firmly restored in the mother country, and the prospect of an early end of the Carlist war presents itself, and thereby the possibility is apparent of concentrating all her forces for suppressing the Cuban insurrection—why now the Washington Government preaches to the world that the insurrection in Cuba must come to an end, and why this was not then done when the revolution in Andalusia, the Canton insurrection in Carthagena, and the civil war in the north, seemed really to deprive the Madrid Government of the possibility of terminating the contest with Cuba.

Moreover, the representatives of Spain abroad successfully, and in accordance with the instructions of their Government, called attention to the fact that in this affair not only a question of American but one of decidedly European interest was affected. Persons may estimate as they will the argument that Spain represents in Cuba European interests and culture; it could not be a matter of indifference to the European powers if the attack of America against Spain should bring a moral and material assistance to the Carlists and if the Spanish republicans in the undoubted renewal of their agitation should render it evident that the starry banner of the United States had been raised in hostility against Spain, not under the republic, but only under the monarchy. And, finally, whosoever has some historical remembrance does not require any proof that a serious complication between America and Spain (and the latter would not hesitate at the most extreme proceedings in order to retain her possession) might have for Europe incalculable consequences.

Mr. Fish to Mr. Orth.

[Telegram.]

WASHINGTON, *January 20, 1876.*

ORTH, *Minister, Vienna:*

May give copy two sixty-six to minister if desired.

FISH, *Secretary.*

Mr. Orth to Mr. Fish.

No. 92.] LEGATION OF THE UNITED STATES,
Vienna, January 21, 1876.

SIR: I hereby acknowledge the receipt of the following telegram, which I translate as follows:

May give copy two sixty-six to minister if desired.

As Count Andrássy desires a copy of said note, I shall, as thus directed, give him a copy as soon as the same can be prepared.

I have the honor, etc.,

GODLOVE S. ORTH.

Mr. Orth to Mr. Fish.

No. 94.] LEGATION OF THE UNITED STATES,
Vienna, January 24, 1876.

SIR: Pursuant to your cable telegram of the 20th instant, I to-day transmitted to the Imperial and Royal minister of foreign affairs a copy of instruction No. 266 to Mr. Cushing.

Herewith inclosed is a copy of my communication to Count Andrássy accompanying such transmission.

I have the honor, etc., GODLOVE S. ORTH.

[Inclosure in No. 94.]

Mr. Orth to Count Andrássy.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, begs leave to remind His Excellency the Count Andrássy, minister of the imperial house and Imperial Royal minister for foreign affairs, that on the 16th day of December, 1875, in pursuance of the instructions of the President of the United States, the undersigned had the honor to bring to the notice of the imperial and royal minister of foreign affairs, by reading to His Excellency the Baron von Hofmann, in the absence from this city of His Excellency the Count Andrássy, a copy of the instructions of the President to his envoy extraordinary and minister plenipotentiary at Madrid on the subject of the relations then and still existing between the United States and Spain growing out of the unfortunate situation of affairs in the island of Cuba.

At a subsequent interview with Baron von Hofmann on this subject he informed the undersigned of the desire of His Excellency the Count Andrássy, to be furnished with a copy of said instructions, with which desire the undersigned was not at liberty to comply, and so informed the Baron von Hofmann; but the undersigned at the same time remarked that he would communicate with his Government and advise the President of the desire of His Excellency the Count Andrássy in this respect.

The undersigned has now the honor to inform his excellency that he has had such communication with his Government, and he is instructed by the President to furnish to his excellency a copy of the said instructions, which copy the undersigned has now the honor of herewith inclosing.

In making this communication to his excellency the undersigned is instructed by the President to assure his excellency that it is the sincere and earnest desire of the President for the termination of the disastrous conflict in Cuba, by the spontaneous action of Spain, or by the agreement of the parties to said conflict. And the undersigned is further instructed to say to his excellency that, should the Government of His Imperial and Royal Majesty find it consistent with its views to urge upon Spain the importance and necessity of either terminating or abandoning this contest, which now, after a continuance of seven years, has not advanced toward a prospect of success on either side, but which is characterized by cruelties, by violations of the rules of civilized modern warfare, by pillage, desolation, and wanton incendiarism, threatening the industry, capacity, and production of an extended and fertile country, the President believes that the friendly expression of such views to Spain by the Government of His Imperial and Royal Majesty might lead that Government to a dispassionate consideration of the hopelessness of the contest, and tend to the earlier restoration of peace and happiness to Cuba, if not to the preservation of the peace of the world.

The undersigned need hardly add that such a course on the part of the Government of His Imperial and Royal Majesty would be exceedingly gratifying to the United States, and, in the opinion of the President, conducive to the interests of every commercial nation and of humanity itself.

The undersigned is further instructed distinctly to assure His Excellency the Count Andrássy that the Government of the United States is not actuated by any ulterior or selfish motives in this matter, nor has it any desire to take advantage of the distracted condition of Spain, but rather to induce her of her own accord to seek an adjustment of the contest now existing between her and her colony.

The undersigned embraces this opportunity, etc.,

GODLOVE S. ORTH.

LEGATION OF THE UNITED STATES,
Vienna, January 24, 1876.

Mr. Orth to Mr. Fish.

No. 95.] LEGATION OF THE UNITED STATES,
Vienna, January 29, 1876.

SIR: I was somewhat surprised this morning while reading the London Telegraph of the 27th instant to find in it what purported to be a telegram from this city of date January 26, and which I herewith inclose.

The matter is probably not of sufficient importance to bring to the attention of the Imperial and Royal ministry for foreign affairs, yet I deem it proper to apprise you of it and to add the remark that it seems somewhat strange that the Imperial and Royal ministry for foreign affairs should not be more reticent with reference to interviews between it and foreign Governments, for I feel sure that it is only through someone connected with the foreign office here that these matters are thus paraded in the public press.

I have the honor, etc., GODLOVE S. ORTH.

[Inclosure in No. 95.—Extract from the London Telegraph of January 27, 1876.]

UNITED STATES AND SPAIN.

[Reuter's telegram.]

VIENNA, *January 26 (evening).*

The United States minister here having been confidentially asked by the Austrian foreign office to leave with it a copy of Mr. Fish's note concerning Cuba, in order that an answer might eventually be returned, he telegraphed to Washington for instructions and received a reply declining the request. It is understood that another note may possibly be sent at a future period.

Mr. Fish to Mr. Orth.

No. 49.] DEPARTMENT OF STATE,
Washington, February 9, 1876.

SIR: I have to acknowledge the receipt of your No. 90, under date of January 13, and which reached the Department on the 4th instant.

You inclose a copy of a telegram which appeared in the London Daily Telegraph, sent from Vienna on the 4th ultimo, stating that the cabinet in Madrid had instructed its representatives abroad to make certain explanations to the Governments to which they were accredited, and that the Austrian Government would not reply to the American dispatch, which had only been read to the minister for foreign affairs.

You state that on January 12 you repaired to the ministry of foreign affairs and commenced the interview by stating that for certain sufficient reasons the President would be pleased to receive an answer, as promised, from the Austrian Government, and that later in the interview you called Baron Hofmann's attention to the telegram referred to, stating that no answer would be given.

While you were instructed to promptly advise the Department of the result of your interview with the minister for foreign affairs, it was not intended that a pressure should be brought upon the minister to furnish you with a reply, especially when it was intimated that the Austrian Government was not disposed to make representations at Madrid.

It may also be said that the language employed by you might have led the minister to suppose that some new instruction addressed to you, or some exigency made it advisable to obtain an answer.

You were instructed to read 266, and to make certain verbal representations in so doing, and it was not contemplated that the reply to be given to such a communication would be in writing.

It was quite competent, however, for the Austrian Government to reply in that form if deemed more advisable—but it does not seem advantageous at the present time and in view of the present situation of the question to press for any formal reply.

I am, etc., HAMILTON FISH.

Mr. Fish to Mr. Orth.

[Telegram.]

WASHINGTON, *February 14, 1876.*

ORTH, *Minister, Vienna:*

Your ninety-four received. Your instructions did not contemplate a written communication from you to minister, nor to press for a formal answer.

FISH, *Secretary.*

Mr. Fish to Mr. Orth.

No. 50.] DEPARTMENT OF STATE,
Washington, February 14, 1876.

SIR: Referring to your dispatches relating to instruction No. 266, addressed to Mr. Cushing, and to your proceedings pursuant to instruction No. 38, the Department is now in receipt of your No. 94, with

which you forward a copy of a note addressed to the foreign office under date of January 24, inclosing a copy of No. 266 to the minister for foreign affairs.

By instruction No. 38 you were directed to make certain oral statements in person to the minister for foreign affairs on reading 266, and it is now perceived that in transmitting a copy thereof you have formally repeated in the note the oral statement which you had once made to Baron Hofmann.

On receipt of your telegram that a copy of 266 was desired by the foreign office, a reply was sent to the effect that as it had not been given to other Governments, it was preferred not to give a copy at that time, particularly so, as very shortly after your interview of December 16 the purport thereof was telegraphed from Vienna and given to the public.

Congress having called upon the President for the correspondence, and in response thereto No. 266 being about to be communicated, you were then authorized to give a copy to Count Andrássy, if still desired.

It was expected that you would await a renewal of the expression by the foreign office for a copy before giving it, and it was not anticipated that in delivering such copy any departure should be made from the personal and oral mode of communication prescribed in the original instruction.

I have already suggested, under date of February 9 and in my telegram of this date, that it is not deemed advisable to ask from the foreign office a formal reply.

I am, etc., HAMILTON FISH.

Mr. Orth to Mr. Fish.

No. 99.] LEGATION OF THE UNITED STATES,
Vienna, February 16, 1876.

SIR: I am in receipt of telegram. I shall, of course, not "press for formal answer."

I have the honor, etc.,

GODLOVE S. ORTH.

Mr. Fish to Mr. Orth.

No. 54.] DEPARTMENT OF STATE,
Washington, February 28, 1876.

SIR: I have to acknowledge the receipt of your No. 95 under date of January 29, with which you inclose a copy of a telegram which appeared in the London Telegraph of the 27th of January, to the effect that upon being asked by the Austrian foreign office for a copy of dispatch 266 in reference to Cuba, you had requested instructions, and a reply had been received declining the request.

You state your surprise that such matters should be communicated by the foreign office at Vienna, from whence you are assured the information has come. I have to say in reply that nearly every step in this matter taken by you at Vienna has in like manner appeared in the public prints in the form of telegrams, appearing to come from Vienna, to the London papers or to those in this country.

At your first interview the facts with particularity immediately appeared in the papers, and I am quite satisfied that a telegram

appeared, at the time a copy of 266 was asked for, stating that you had asked for instructions.

This last telegram seems to complete the information.

It would be quite proper to call the attention of the foreign office, at some convenient season, to the surprise which such publications have occasioned in this country.

In my telegram of the 14th of January last, declining to give a copy of 266 at that time, and in the statement that the facts concerning the reading of that dispatch had been given to the public, I referred to the telegram concerning your first interview.

I am, etc., HAMILTON FISH.

Mr. Orth to Mr. Fish.

No. 104.] LEGATION OF THE UNITED STATES,
Vienna, February 29, 1876.

SIR: While at the office of the imperial and royal ministry of foreign affiairs on yesterday, Count Andrássy remarked to me that he had read with much interest the copy of the Spanish note (referring to No. 266) which I had furnished in pursuance to instructions and inquired whether it was expected that he should, on behalf of his Government, present any reply.

I told him the object of presenting the note to the Government of His Imperial and Royal Majesty was merely for information, and that my Government did not expect any reply thereto.

I have the honor, etc.,

GODLOVE S. ORTH.

FRANCE.

Mr. Fish to Mr. Washburne.[1]

No. 756.] DEPARTMENT OF STATE,
Washington, November 15, 1875.

SIR: Herewith you will receive a copy of an instruction, No. 266, dated the 5th day of November instant, addressed to Mr. Cushing, the minister of the United States at Madrid, which sets forth at length the considerations which have led this Government to the adoption of the views therein expressed concerning the condition of affairs in Cuba. It is believed that other powers, as well for the interests of their own subjects or citizens as for the sake of humanity at large, will recognize the justice thereof, and the necessity of the course which the President feels it his duty to pursue.

You will read this instruction 266, or state orally the substance thereof, to the minister of foreign affairs confidentially (but will not give a copy thereof), and will assure him of the sincere and earnest desire of the President for a termination of the disastrous conflict in Cuba by the spontaneous action of Spain, or by the agreement of the parties thereto.

You will further state that the President is of opinion that should the Government to which you are accredited find it consistent with its views to urge upon Spain the importance and necessity of either

[1] Same to legations of the United States at Berlin, St. Petersburg, Vienna, Rome, and Lisbon.

terminating or abandoning this contest, which now, after a continuance of seven years, has not advanced toward a prospect of success on either side, but which is characterized by cruelties, by violations of the rules of civilized modern warfare, by pillage, desolation, and wanton incendiarism, threatening the industry, capacity, and production of an extended and fertile country, the friendly expression of such views to Spain might lead that Government to a dispassionate consideration of the hopelessness of the contest, and tend to the earlier restoration of peace and prosperity to Cuba, if not to the preservation of the peace of the world.

Such a course on the part of the Government to which you are accredited would be exceedingly satisfactory to the United States, and in the opinion of the President conducive to the interests of every commercial nation, and of humanity itself.

You will at the same time distinctly state that this Government is actuated by no ulterior or selfish motives, and has no desire to take advantage of the distracted condition of Spain, but rather to induce her to spontaneously seek an adjustment of this contest.

I need not impress upon you the confidential nature of these instructions, nor the delicate duty which is imposed upon you.

Similar instructions have been issued to the representatives of the United States accredited to the principal European powers.

You will seek an early interview with the minister of foreign affairs, and promptly advise me by telegraph, in cipher, of the result thereof.

I am, etc.,

HAMILTON FISH.

P. S.—Since the above instruction was prepared, a telegram[1] has been received from Mr. Cushing, which renders it advisable that no steps be taken by you to communicate instructions No. 266, as directed, until further instructions be sent you by telegraph.

H. F.

Mr. Fish to Mr. Washburne.[2]

[Telegram.]

WASHINGTON, *December 6, 1875.*

WASHBURNE, *Minister, Paris:*

Proceed as instructed in No. 756; message will discountenance recognition of belligerence or independence; will refer to continuance of struggle, and intimate that mediation or intervention by other powers will be an ultimate necessity unless adjustment reached; will express willingness to mediate; will be friendly and conciliatory in tone.

FISH, *Secretary.*

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[1] Mr. Cushing's telegram, dated November 16, here referred to, brought satisfactory assurances from the Spanish Government upon the points in dispute. It is printed in House Ex. Doc. No. 90, Forty-fourth Congress, first session.

[2] Reprinted from House Ex. Doc. No. 90, Forty-fourth Congress, first session. Same to legation of the United States at Berlin, and, under date of December 13, to the legations at St. Petersburg, Vienna, and Rome.

Mr. Hitt to Mr. Fish.

[Telegram.]

PARIS, *December 9, 1875.*

Duke Decazes wishes to consult with English Government before answering. Thinks Madrid Government so weak it dares not settle Cuban question.

HITT, *Chargé.*

Mr. Hitt to Mr. Fish.

No. 1263.] LEGATION OF THE UNITED STATES,
Paris, December 10, 1875.

SIR: On the morning of Tuesday the 7th instant I had the honor to receive your cipher telegram, addressed to Mr. Washburne, of date the 6th, to "proceed as directed in dispatch No. 756."

Immediately after deciphering the telegram, I went o the foreign office, but the Duke Decazes had gone to Versailles, being engaged in the debate on the Egyptian judiciary reform bill. It was expected that the debate would close that day, and that I could have an interview the next. The debate continued, however, and the Duke having to make his speech the next day closing the debate, which had excited a good deal of public interest, he desired to devote his whole attention to that subject. Wednesday he was therefore at Versailles, but sent me word that he would hurry back after the session and see me at half past 5 Thursday, when I accordingly had an interview with him. This will explain the delay.

In this interview I stated orally the substance of your dispatch to Mr. Cushing accompanying your No. 756: the long-continued and unsatisfactory correspondence between our Government and that of Spain in relation to the questions growing out of the strife in Cuba; the embargo and confiscation of estates in Cuba belonging to our citizens and the failure to comply with the stipulations of the treaty of 1795; the delays for now over six years to remedy this admitted injustice, the tardy orders of the home Government being disregarded by the colonial authorities; the trial by courts-martial of American citizens and their summary punishment, the equally unsatisfactory result, in fact, of correspondence with successive ministries; the failure to try General Burriel, who had received promotion instead of punishment; the nature of the war in Cuba, involving so much injury to our interests and entailing a constant strain upon our Government in maintaining all its obligations, of which it has been scrupulously careful; the utter hopelessness of the war on the part of Spain, the friendly feeling of our Government, and its earnest and unselfish desire to see an end to this ruinous struggle.

At this point I stated the substance of that part of the President's message which relates to this subject, as given by the cable, and then communicated to him the opinion of the President that if France, in her situation specially favorable for such an office, should see fit to urge in a friendly spirit upon Spain the necessity of an immediate solution of this seven years' trouble, by either abandoning the useless struggle or in some way adjusting the differences with the Cubans, it might be received in a dispassionate spirit and lead to results which would obviate the increasing danger of further complications and tend to the preservation of peace; and that our Government would view

such an act on the part of our ancient ally with great satisfaction. This is, briefly, what I stated with more detail and precision.

The Duke Decazes replied, that while cordially desiring the end of the strife in Cuba, there were many embarrassments surrounding the proposition, and reason to apprehend that such a suggestion to Spain would be fruitless. He had been informed that a similar presentation of the case had been made to Lord Derby, and asked me if it had not been made in the same terms.

I answered that I did not know that the proposition had been made in the same terms precisely, but I presumed so.

The Duke proceeded: "Lord Derby, I am advised, asked for time before giving a categorical answer. I wish to have further communication with the London cabinet, that there may be an understanding between us on the subject; and therefore I will defer any formal answer for the present. The question is one of a very delicate nature, and whatever we might wish to see done at Madrid, or that Government might be disposed to do, the great obstacle to any result lies in the weakness (impuissance) of the Government of the young Alphonso. That weakness as regards this particular question arises from a general condition (ensemble) of affairs in Spain. Many circumstances together have produced such a situation that, although the Spanish Government might wish to take such steps as were proposed—tending to self-government and emancipation in Cuba—it dare not do it. It would fall if it attempted a policy which could be used against it with the Spanish people. The northern provinces, disturbed by the Carlists, and Cuba with its insurrection, are both held with difficulty. The young King's Government must move with exceeding care. Besides, there is doubt of the power of the home Government to enforce its will. Have you not just told me of one of its decrees in regard to embargoed estates that was disregarded?"

I replied: "That is true; but the Spanish Government is the only power responsible for what is done in Cuba. They do not admit that war exists. The question, however, is not merely what will suit the special interests of any one, but it concerns the preservation of the general peace. The United States have endured the condition of things I have described for seven years. Would France have been more patient? Is it not well for you, situated so favorably, to try in the interest of mankind to end a state of things, so threatening as it might become in the event of another *Virginius* affair, if you can do it by a friendly word?"

The Duke resumed: "I appreciate the situation. I listened to your statement with the deepest attention; but the question is grave and surrounded with difficulties. The young King dare not commence his reign with a failure (defaillance). We have suffered from the strife in Cuba in our interests, though less than you, and we wish it were ended. But if the Spanish Government allowed the Carlists a pretext to assume to be the champions of the preservation of the colony to Spain, it would increase its embarrassments. There is the recent letter of Don Carlos, proposing to subdue the rebellion in Cuba; the Spanish people (ces pauvres diables espagnols) take it for serious, and do not see the ridiculous side of it."

The Duke asked if I was at liberty to give him a copy of your dispatch. I informed him that my instructions were to read or state orally the contents to him. He said he would reduce our conversation to writing from memory, and send me a copy by his chef du cabinet for correction. He asked if there was not news of recent accommodation having been

effected. I told him that the newspaper dispatch referred to from Madrid only professed to give the substance of a dispatch from the Spanish minister, assenting to our claim for a trial before civil tribunals, and defenders for Americans arrested in Cuba, in conformity with the treaty of 1795; but that twice before the Spanish Government had, in particular cases, promised to carry out that treaty and redress such wrongs; that it only concerned one of the several questions pending, and not the general question.

He resumed, describing the situation of Spanish politics, but I have given above all that fell in direct response or reference to the proposition I had presented.

I have, etc., R. R. HITT.

Mr. Fish to Mr. Hitt.

No. 775.] DEPARTMENT OF STATE,
Washington, January 7, 1876.

SIR: Your No. 1263, giving the statement of your interview with the Duke Decazes, pursuant to the instructions contained in my No. 756, has been received.

Your statements in bringing to the notice of the minister of foreign affairs No. 266 to Mr. Cushing were judicious and apposite, and your proceedings as reported are approved.

No definite conclusion seems to have been reached by the minister of foreign affairs, as you report that information having reached the French Government in reference to the communication made to Lord Derby on the same question, the Duke Decazes stated that he desired an opportunity to consult with the English Government as to the course which should be pursued.

It is not known what communication, if any, has taken place between Duke Decazes and Lord Derby. General Schenck, however, stated in a telegram under date of December 2 that Lord Derby had informed him that while his Government was not then prepared to give a categorical answer as to what steps would be taken, at the same time he was willing to say that his Government was ready to cooperate with the United States in such way as might bring about a settlement of the troubles in Cuba, without bringing pressure to bear upon Spain or putting forward such proposals as would certainly be rejected.

I deem it proper to inform you as to the condition of the question, and you will forward to the Department any information which may be obtained in reference thereto, and in case the minister of foreign affairs has communicated to you no conclusion on the part of his Government, you will take a suitable occasion again to delicately call his attention to the matter.

I am, etc., HAMILTON FISH.

Mr. Hitt to Mr. Fish.

No. 1279.] LEGATION OF THE UNITED STATES,
Paris, January 23, 1876.

SIR: Last evening I saw the Duke Decazes a second time in regard to the Cuban question. I had received your dispatch No. 775 in the morning, and during the course of the day took occasion to ask his

chef du cabinet when I might see the minister. The answer came at once that he would see me at 5 o'clock.

In this interview I recalled his attention to the subject of our conversation a month ago, and said that I did not come to ask for an answer to what I had then presented nor to urge it upon him again; but he had remarked that he desired to have an understanding with Lord Derby before giving a full response; I had been informed that Lord Derby, while not answering categorically, had signified the readiness of the English Government to cooperate with the United States to bring about a settlement of the Cuban troubles without bringing pressure to bear upon Spain, or making proposals certain to be rejected. I had therefore called, remembering the friendly spirit in which he had treated the subject before, to hear any suggestions or information he might choose to communicate.

The Duke Decazes replied that since our former conversation he had given the question very serious attention. He had made note of the substance of my statement at that time, had ascertained that the statement presented to Lord Derby was substantially the same; had made similar inquiry at Vienna; also at St. Petersburg, though he had not as yet received an answer from the Russian minister. He had ascertained that Lord Derby was disposed to agree to any step toward a solution, provided it could be seen that it would produce a practical result, but Lord Derby feared that in the present position of affairs in Spain, such proposals as were suggested by the United States, if addressed to Spain, would be useless. Lord Lyons had recently called upon him (Decazes) on this subject, and there was an exchange of views in regard to the condition of Spain and this question of Cuba and the way in which it was regarded by the English Government.

"I told him," said the Duke, "that I thought we might say some word to Spain which would lead to something, if it was done with due regard to the susceptibilities of that Government, if it was managed properly and with care and preceded by a manifestation of the friendly spirit of those offering it."

"It is true," he continued, "the opportunity for such a suggestion is not striking just now. They are occupied over there in Spain with the elections and with the Carlist war. They have been making a greater effort than before to end that Carlist war. They are all in uncertainty about themselves, and are thinking of the elections and their results. How can one ask them to attempt the settlement of such a grave and difficult question as their relations with Cuba, and that long contest there, when they are uncertain whether they will be the ministers twenty-five days from this time? They are looking ahead with anxiety, and do not care to broach such a business now. Still, I think it might be well to make some representation in regard to this Cuban trouble in the way I have mentioned, say some word which would not be unacceptable, and would accord with the wishes of your Government; and I wish to act in an understanding with Lord Derby. It is now two weeks since I offered the suggestion which I have just recited to you, and I have not yet received a response; but at that I am not surprised, for Lord Derby has been out of town and only returned the other day for a council, and probably has been so occupied otherwise as would account for the delay."

I thanked him for the cordiality and frankness with which he discussed the question, which was one of profound interest to the United States and just now engaged the attention of Congress, having been, as he was aware, the subject of a part of the President's message. The

English Government had had occasion to accord with our own repeatedly in the discussions growing out of affairs in Cuba, and the Government of France had so long been friendly to the United States that we had no hesitation in approaching it in regard to a case which we deemed so manifestly just.

He remarked: "Be assured that we have not neglected this matter. Although a month has passed, the considerations you offered have received much attention, and we recognize the character of the question. In all this, however, you know you have a special interest, and you look at the struggle in Cuba in view of the facts that urgently affect you. Our interests are also touched, but not so largely as yours, by that insurrection. European Governments do not feel so pressingly the need of instant action. We must consider all the circumstances, the condition of the Spanish Government, and the probability of a result if we said anything just now. I wish your Government to know that we are sincerely interested in the matter you have presented, and anxious to be able to give you such an answer as will be pleasing to your Government."

I have, etc., R. R. HITT.

Mr. Washburne to Mr. Fish.

No. 1288.] LEGATION OF THE UNITED STATES,
Paris, February 15, 1876.

SIR: Learning that the Duke Decazes had returned to Paris, I took occasion on Friday last to make an official call upon him, in order to pay my respects upon my return to Paris and to speak to him in relation to several pending questions.

I first called his attention (and this for the third time) to the subject of your circular letter in regard to diplomatic intercourse in China.

He excused the long delay in answering, and promised to send a note on the subject in a few days.

I then had a conversation with him touching the proposition which I had made for a telegraphic treaty, and particularly in regard to a late communication I had received from him on the subject. I shall probably be able to make a separate dispatch in regard to this matter before a long time.

But the important part of the interview was in relation to Spanish affairs and to your circular, which in my absence Mr. Hitt had submitted to him. I asked him how far he had considered the subject, and what I could write to my Government in reply. With great frankness he answered, in substance, as follows:

I have thought of it, and am still thinking of it. This Cuban question touches us also very closely—it affects our interests as it does yours. Our commerce with the island is now paralyzed, and the continuance of the state of things which exists there has been to us a source of many kinds of annoyance. We suffer from that state of things like you, and we would desire very much to see an end put to it. Unfortunately, it is difficult to suggest anything practicable in this respect. What could be said to Spain at this moment which would be of any use to you and to her? She is actually under so many embarrassments, and she has so many things that are the subjects naturally of her gravest attention that we would fear to hurt her susceptibilities unnecessarily and render the situation more embarrassing to both Governments than it is, should we just now approach her directly on this question. I have, however, said a word in the matter—a discreet word. I have communicated to the Marquis de Molins the analysis of the conversation I had with Mr. Hitt. I made him that communication confidentially, and I told him:

"I don't ask of you any answer, but think of this. There is here a grave situation which calls for your attention. There is something to do; reflect upon it. I will have probably to speak again of this to you, and if you yourself bring the subject up, so much the better."

Winding up his statement, the Duke resumed:

In short, I beg you to bear two things in mind: Firstly, that we are sincerely desirous to assist you and Spain in this affair; secondly, that the situation of Cuba affects our own interests, and that we would be quite willing to cooperate with you in bringing it to an end if we thought the opportunity was favorable for that. Il faut attendre.

The Duke Decazes is very much occupied at present in his canvass, being a candidate for deputy in the new assembly. He is running in the eighth arrondissement of Paris, in which this legation is situated; also in the department of Aveyron, in the southern part of France. He did not seem to be entirely confident of an election in either district. You will have the result, however, by Monday next, by telegraph.

I have, etc.,

E. B. WASHBURNE.

Mr. Fish to Mr. Washburne.

No. 783.] DEPARTMENT OF STATE,
Washington, February 17, 1876.

SIR: I have received and read with attention Mr. Hitt's dispatch, No. 1279, under date of January 23 last, in reference to his interview with the Duke Decazes concerning the substance of instruction No. 266, addressed to Mr. Cushing.

The dispatch is a clear and concise statement, and his proceedings, as detailed therein, are approved.

I am, etc., HAMILTON FISH.

GERMANY.

Mr. Fish to Mr. Davis.

No. 148 of November 15, 1875. (Same as No. 756 of same date to Mr. Washburne, p. 98.) Telegram of December 6, 1875. (Same as that of same date to Mr. Washburne, p. 99.)

Mr. Nicholas Fish, Chargé, to Mr. Fish.

[Telegram.]

BERLIN, *December 7, 1875.*

Telegram of 6th received. Inclosure of 148 read to Mr. von Bülow. He thanked for information. Said he would lay it at an early day before Emperor and Prince Bismarck. That in the interest of peace and commerce Germany desired question settled, but he could only take the matter ad referendum.

FISH, *Chargé.*

Mr. Nicholas Fish, Chargé, to Mr. Fish.

No. 220.] LEGATION OF THE UNITED STATES,
Berlin, December 8, 1875.

SIR: I had the honor to receive your telegraphic instruction of December 6 at 10.30 a. m. yesterday, directing me to proceed as instructed in No. 148.

As soon as the telegram could be deciphered, I called at the foreign office and explained to Mr. von Bülow the object of my visit, and in order that he might more perfectly understand the views of the President, I took with me instruction No. 148, and refreshed my memory therefrom.

I was careful to inform him that it was believed that other powers would recognize, for the interests of their own citizens as well as for the sake of humanity, the necessity of the course which the President feels it his duty to pursue. I stated to him the opinion of the President that should this Government find it consistent with its views to urge upon Spain the necessity and importance of either terminating or abandoning the contest in Cuba, the friendly expression of such views to Spain might lead to the earlier restoration of peace and prosperity to Cuba, if not to the preservation of the peace of the world.

I told him that such a course on the part of Germany would be exceedingly satisfactory to the United States, and, in the opinion of the President, conducive to the interests of every commercial nation, and of humanity.

I distinctly stated that the Government of the United States is actuated by no ulterior or selfish motives, and has no desire to take advantage of the distracted condition of Spain, but rather to induce her to spontaneously seek an adjustment of this contest.

In order to impress this upon him, I read from instruction 148 the paragraph relating thereto.

I then read to him confidentially your instruction to Mr. Cushing, No. 266.

As I began he checked me to inquire what the date of it was, and then listened attentively to the whole reading.

At its close he thanked me for the information and said that he would take an early occasion to lay the matter before the Emperor and Prince Bismarck, and that he could only say that in the interest of peace and commerce Germany desired the question settled, but that he could only take the matter "ad referendum."

He also told me that they had some questions of unjust treatment of German subjects in Cuba, to which attention had been called in the Reichstag, and that while their treaty with Spain was ambiguous, they would seek to protect the rights of their citizens there.

With this my interview closed, and on leaving the room I found the Spanish minister waiting in the antechamber; he had been announced while I was reading the first portion of your instruction to Mr. Cushing.

I inclose an account cut from the Post of the 25th November (with translation of the same) of the interpellation in the Reichstag, to which Mr. von Bülow referred.

I have the honor to be, sir, etc.,

NICHOLAS FISH.

[Inclosure in No. 220.—Translation. Extract from German Parliamentary proceedings, the Post, November 25, 1875.]

The title "Consulate at Havana" being called, Deputy Mosle expresses the wish that the prayers for protection against contributions addressed by the German merchants resident there to the foreign office might be responded to.

Federal Commissioner von Phillipsborn declared that the possibility of intervention might be judged of differently according to different interpretations of the treaty; the foreign office was, however, in connection with the representatives of other Governments, occupying itself with the question.

Mr. Nicholas Fish, Chargé, to Mr. Fish.

No. 222.] LEGATION OF THE UNITED STATES,
Berlin, December 14, 1875.

SIR: Since my No. 220, I have called twice at the foreign office to see if Mr. von Bülow had any information to give me in regard to the restoration of peace in Cuba. It was not until to-day that I succeeded in finding him.

He stated to me that he had communicated the substance of your instruction 266 to Mr. Cushing to Prince Bismarck, as well as the length of the instruction would enable him to do so, and that the Prince had laid it before the Emperor.

I thanked him for the information, and said that I would communicate it to you, and that I felt sure that the President would be pleased to know of the manner in which his views had been received.

I have, etc.,

NICHOLAS FISH.

Mr. Nicholas Fish to Mr. Fish.

No. 224.] LEGATION OF THE UNITED STATES,
Berlin, December 17, 1875.

SIR: Referring to my Nos. 220 and 222, I have the honor to inclose herewith translation of a telegram I sent you at 2 p. m. on the 15th instant.

I have the honor to acknowledge the receipt of your telegram of the 16th instant, which was received at 2 a. m. to-day.

I inclose a copy and translation of the account given in the Neue Preussische Zeitung of the interpellation in the Reichstag, which appears to be fuller than the one given in the Post, though not essentially different.

The interpellation occurred in the session of November 23.

I have been unable to find any newspaper comments upon the subject of the interpellation, and it does not appear to have attracted much attention at the time.

I have the honor, etc., NICHOLAS FISH.

Mr. Fish, Chargé, to Mr. Fish.

[Inclosure 1 to No. 224.—Telegram of December 15, 1875—2 p. m.]

Two sixty-six to Cushing in substance laid before Emperor by Bismarck. Germany desires peace, and will continue to urge necessity of tranquillity with view of adjustment of German grievances.

FISH, Chargé.

[Inclosure 2 in No. 224.—Interpellation in regard to the consulate at Havana in German Parliament November 23, 1875, from the Neue Preussische Zeitung.]

In regard to title 45 (consulate at Havana) Deputy Mosle remarks: The German merchants in Havana, as well as in every part of Cuba which is in the possession of the Spanish Government, are subjected to the war contributions, which the Spanish Government has imposed in consequence of the revolution, in the most exorbitant and insupportable manner. Now, it is clear that in times such as exist in Cuba, in which the revolution demands great sacrifices on the part of the Government, those also should contribute who have long enjoyed the advantages of peace. The German merchants in Havana, however, believe that these demands have been excessive and that they are entitled to exemption from these war contributions under the treaty with Spain, and for the reason that Cuba is no longer a colony but has become a Spanish province. They have in consequence, if I am not in error, addressed themselves to the imperial chancellor for relief from this evil. I desire on my part to ask the representatives of the Government if steps have been taken to relieve these complaints of the merchants. I should be much obliged if information could be given me on this subject.

The Federal Plenipotentiary von Philipsborn: The complaints of Germans concerning these contributions have long since come to the knowledge of the foreign office. The latter at once made a close investigation of the subject, with the result that there arose for consideration a number of treaty provisions which are otherwise interpreted by the other side than by us. We could take no action alone, but only in conjunction with other friendly Governments concerned in like manner. To this is added the necessary consideration not to cause more difficulties to the Spanish Government at this moment than the position of things absolutely requires. The foreign office is, however, continually endeavoring to further the matter in the interests of the Germans at Havana.

Deputy Mosle: I thank the representative of the Federal Government for the information, and shall hope that it may succeed in mastering these difficulties at a very early day.

Deputy Kapp inquired how it happened that so important a consulate as that at Havana should have been unoccupied for half a year.

Federal Plenipotentiary von Philipsborn: As is known, the last consul at Havana was lost on the steamship *Schiller*, and it has not yet been possible to definitely fill this consulate. The representation of the consulate for the time being is, however, in good hands, and the interests of the Germans at Havana are now preserved and protected in every direction.

The position is approved.

Mr. Fish to Mr. Nicholas Fish.

No. 165.] DEPARTMENT OF STATE,
Washington, January 7, 1876.

SIR: I have to acknowledge the receipt of your 220 and 222, dated, respectively, December 8 and December 14, ultimo.

Your proceedings in communicating to Mr. von Bülow instruction 266, addressed to Mr. Cushing, as reported in your 220, and in your further interview, as reported in your 222, are approved.

No information has reached the Department of any representations having been made by the German representative at Madrid in the sense indicated by Mr. von Bülow, and you will report to the Department any information which you may be able to obtain on that subject, and with reference to the exact instructions which have been issued, and as to any steps which have been taken at Berlin, bearing on the question.

You will take an early occasion to express to the minister of foreign affairs the satisfaction of the President that the views expressed in instruction 266 are in some measure at least concurred in by the Government of Germany, and that, appreciating the purpose in view, that Government was ready to instruct its representative at Madrid, as referred to by Mr. von Bülow.

I am, sir, etc., HAMILTON FISH.

Mr. Nicholas Fish to Mr. Fish.

No. 242.] LEGATION OF THE UNITED STATES,
Berlin, January 10, 1876.

SIR: In the interview which I had with Mr. von Bülow to-day, and which I have reported to you in my No. 241,[1] I asked him if he had anything to communicate to me, in hope that he would state more definitely what this Government intends doing in regard to Spain. He said, without referring to the subject by name, that he had nothing new to communicate.

While paying a visit at the house of the Spanish minister on Friday, he took occasion to turn the conversation to the affairs of his own country, and stated that all their efforts were being urged and strained for the purpose of suppressing the Carlists; that they would very shortly have 380,000 men in the field, and that their army would move to the north as soon as the winter would permit; he said that he felt sure of success, and that then it was the desire of his Government to turn all its energies to the restoration of peace in Cuba; and that then it desired to perform all its obligations to the United States in a spirit of justice, equity, and friendship.

I answered that I knew very little of the condition of affairs in Spain, but that in the United States, where the duration of the insurrection in Cuba gave rise to many causes of vexation, we would be greatly pleased at seeing peace restored in Cuba, but that officially I could not say anything on the subject.

I report the conversation, as the minister, Mr. Merry y Colom, seems to be on intimate terms with the Spanish minister of foreign affairs, and purported to express his views.

I have, etc., NICHOLAS FISH.

Mr. Davis to Mr. Fish.

No. 254.] LEGATION OF THE UNITED STATES,
Berlin, January 26, 1876.

SIR: At the interview with Mr. von Bülow to-day, reported in my No. 255,[1] we also spoke of Cuba. I asked him if he could say to me what answer had been made to the German representation about the duration of the war. He replied that the Spanish Government had assured Count Hatzfeldt that the insurrection would be shortly suppressed—as soon as the Carlists should be put down—and that as soon as the rebellion was crushed liberal reforms would be given to Cuba. I told him that I had frequently before heard of such promises, and I asked him whether it was proposed to withhold all advances to the insurgents until the rebellion should be crushed. He said he believed it was. I said that I was very sorry to hear it, for judging from the past there seemed to be little probability of the speedy suppression of the rebellion. He said that the Spanish Government represented that the insurrection was confined to insignificant numbers of negroes and mulattoes; that no or few Cuban white persons were engaged in it, and that none of the white population of the island sympathized with it.

I replied that I had no instructions on the subject, and that in what I was about to say I spoke my individual opinion and in no sense the

[1] Not printed.

views of my Government. Speaking thus individually, I would say that I believed such representations to be incorrect. I believed almost the whole creole population of the island was dissatisfied with the violent and arbitrary measures of Spain, and that if the Spanish troops were withdrawn from the island, and the persons known as peninsulars were left alone to deal with the insurrection, the world would soon see that the opposition to Spain was not confined to a few negroes and mulattoes. He said that the subject was full of difficulties for Germany—that their traders and merchants have large interests in Cuba which are suffering, and that they would be glad to see peace restored. I learn from other sources that this is the case, that the tobacco merchants of Bremen and Hamburg have been much injured, and that they are pressing the Government to do something in their behalf with more zeal than is agreeable to the Government.

I have, etc.,

J. C. BANCROFT DAVIS.

GREAT BRITAIN.

Mr. Fish to Mr. Schenck.

No. 805.] DEPARTMENT OF STATE,
Washington, November 5, 1875.

SIR: Herewith you will receive a confidential copy of an instruction this day addressed to Mr. Cushing, the minister of the United States in Madrid. Such part as relates to our particular causes of complaint against the Spanish authorities concerns the United States alone. Such part of the instruction, however, as announces to Mr. Cushing the conclusions to which the President has arrived in reference to the strife now raging in Cuba, and as instructs him to communicate these conclusions to the Spanish Government, is believed to be not only of interest to the Government of Great Britain, but such as it is supposed will be regarded by that Government as just and necessary.

The instruction sets forth the considerations which have led this Government to the conclusions which have been reached, and it is hoped that the Government of Great Britain, having similar interests to protect, and regarding this strife from a similar point of view, as well for the interests of its own subjects as of humanity at large, will not be unwilling at least to support our position by its approval and influence. This being the case, the President is of opinion that it is just to the Government of Great Britain to communicate in confidence these conclusions, and to suggest that, in his opinion, the expression by Great Britain to Spain of its approval of the view of this Government, and its influence to induce a settlement, will tend to a more speedy adjustment and will more surely induce the Government of Spain, by some wise and conclusive measures, to render all thought or necessity of intervention from any quarter unnecessary.

The Government of Great Britain may possibly, of its own accord, think proper, in view of its own interests, to cooperate with the United States in this effort to arrest a cruel war of devastation. This, however, is a question to be raised by Her Majesty's Government. Humanity, its own great interests, and a regard for the preservation of the peace of the world, it is believed, will, without doubt, lead it to support the position which this Government has at length been forced to assume, and to address its representative in Madrid to that end.

Mr. Cushing has further been instructed to defer his interview with the minister of state until you shall have communicated to this Department the result of your interview with Lord Derby. You will read to Lord Derby, in confidence, the copy of the instruction to Mr. Cushing (No. 266), inclosed herewith, and will distinctly state that this Government has no selfish or ulterior objects in view, and no desire to take advantage of the difficulties which have surrounded the Spanish Government.

You will take the earliest occasion practicable to comply with this instruction, and will promptly communicate with the Department by telegraph, and in cipher, the result thereof.

I also inclose for your information and for such use as may be advisable in this interview, a copy of an instruction addressed to Mr. Cushing (No. 267), by which he is instructed to await further instructions from the Department before communicating with the minister of state, in order that the disposition of the British Government may be ascertained.

I need not impress upon you the confidential nature of all of these instructions, and the delicate duty which is imposed upon you.

You may say to Lord Derby, without reading to him the instruction last mentioned, that Mr. Cushing is instructed to withhold the presentation to the Spanish Government of the decision of the President until after it shall have been made known to Her Majesty's Government.

I inclose also for your information a copy of an instruction to Mr. Cushing (No. 265, of the date of November 5, instant) on the subject of General Burriel. * * *

I am, etc., HAMILTON FISH.

Mr. Fish to Mr. Schenck.

[Telegram.]

WASHINGTON, *November 19, 1875.*

SCHENCK, *Minister, London:*

Advices from Cushing suggest delay in reading inclosure to eight hundred and five. You will await further instructions.

FISH, *Secretary.*

Mr. Schenck to Mr. Fish.

No. 830.] LEGATION OF THE UNITED STATES,
London, November 20, 1875. (Received December 6.)

SIR: I received last evening your telegram of yesterday.

Your No. 805 referred to in your telegram reached me early this morning, and would have been read to Lord Derby to-day had not your telegram delayed my action.

I have, etc., ROBT. C. SCHENCK.

Mr. Fish to Mr. Schenck.[1]

[Telegram.]

WASHINGTON, *November 27, 1875.*

SCHENCK, *Minister, London:*

Read inclosure to eight hundred five as soon as opportunity will admit. You will explain that intervention is not contemplated as an

[1] *Reprinted from House Ex. Doc. No. 90, Forty-fourth Congress, first session, but omissions supplied.*

immediate resort, but as a contingent necessity in case the contest be prosecuted and satisfactory adjustment of existing griefs be not reached, and that we sincerely desire to avoid any rupture, and are anxious to maintain peace and establish our relations with Spain on a permanent basis of friendship. I now state further, for your own information and for your guidance in your interview with minister, that message will discountenance recognition of belligerency or independence; will allude to intervention as a possible necessity, but will not advise its present adoption. Cushing is instructed to communicate to minister without waiting result of your interview, but you will communicate with him in cipher after your interview.

Take precaution that the purport of instruction or of information above be not given through minister to press or public.

FISH, *Secretary.*

Mr. Schenck to Mr. Fish.

[Telegram.]

LONDON, *November 30, 1875.*

FISH, *Secretary, Washington:*

Have communicated confidentially and fully with Lord Derby and read instruction to Cushing.

He will give me views of this Government Thursday.

SCHENCK, *Minister.*

Mr. Schenck to Mr. Fish.

[Telegram.]

LONDON, *December 2, 1875.*

FISH, *Secretary, Washington:*

Had interview again with Lord Derby. He received telegram yesterday from Layard saying Cushing had delivered to Spanish Government your note of 5th, but requested no definite action upon it until he could communicate with you. He expected you would receive yesterday or to-day a communication from the Spanish Government, and if that affords basis for settlement of grievances the President might modify views in message.

Lord Derby prefers in this state of circumstances not to discuss the matter until the President has had opportunity of considering last communication from Spain. He has no objection, however, to say his Government would be willing, in the interest of humanity and friendship, to cooperate in any way that promises to bring about a settlement of troubles in Cuba, but is not prepared to put any pressure on the Spanish Government or to put forward proposals which he has reason to think it would not be inclined to accede to. Thinks Spain, as a saving of her dignity, might be willing to accept some interposition, in which case Great Britain would not object to use good offices, but not if Spain stands off and declines any interference. Believes Spain will certainly reject any proposal for her giving up Cuba, and would never yield that except to force, but might be induced to agree on a basis of self-government of the island.

SCHENCK.

Mr. Fish to Mr. Schenck.[1]

[Telegram.]

WASHINGTON, *December 6, 1875.*

SCHENCK, *Minister, London:*

Communication from Spanish Government, referred to in your telegram of 2d, received to-day. It is friendly in tone and is hoped will afford basis of adjustment of our particular grievances.

It suggests no alteration in message upon general questions of the condition of Cuba and continuance of struggle.

As indicated in my telegram of 27th, message will discountenance recognition of belligerence or independence; will intimate that mediation or intervention by other powers will be an ultimate necessity unless adjustment soon reached; will express our readiness to mediate; will be friendly and conciliatory in tone.

FISH, *Secretary.*

Mr. Schenck to Mr. Fish.

No. 860.] LEGATION OF THE UNITED STATES,
London, January 27, 1876. (Received February 11.)

SIR: The text of your note of the 5th November to Mr. Cushing was considered of so much interest here that it was telegraphed in full by the cable immediately after it was communicated to Congress. It was printed in the London Times and in one or two other metropolitan newspapers on the morning of the 24th instant, with leading articles commenting on the exposition thus authentically conveyed to the public of the actual diplomatic position and relations between the United States and Spain.

I inclose of these articles three or four which may help to give you some idea of the outside English feeling and temper always exercising no little influence on the views of Her Majesty's Government.

The Morning Post and the Pall Mall Gazette are not to be much regarded, for they represent that sort of Toryism which is given to carping at almost everything done by our Government. But the articles in the Times, which are much fairer, reflect, I think, a good deal of what may be taken as the general tendency of British sentiment, or I may even say of British judgment, in relation to our complaints against Spain.

I would attract your attention more particularly to what appeared in the columns of the Times yesterday. The writer could not forbear a flippant fling at what he characterizes as your "rhetoric," but otherwise the spirit in which that article is conceived and the views it presents so nearly shadow the disposition of this Government that I am inclined to believe it has been in some sense officially inspired. It followed the next morning after an interview I had with Lord Derby; and in the suggestion that the representatives of friendly States might, without the formality of intervention, show Spanish ministers at Madrid it would be no discredit to grant reasonable demands, I think I see something of the idea which is in the mind of his lordship.

It was my intention to give you by to-day's mail an account of what passed between Lord Derby and myself in the interview referred to, which took place on the 24th instant—two days ago. But he promised

[1] Reprinted from House Ex. Doc. No. 90, Forty-fourth Congress, first session.

at parting to send me an informal memorandum of the views he expressed, so that I might report his words with perfect accuracy; and he has not yet furnished me with that memorandum.

I shall communicate the substance of the conversation by the mail of Saturday.

I have, etc., ROBT. C. SCHENCK.

[Inclosure 1 in No. 860.]

Editorial, London Times of January 24, 1876.

A long and severe criticism of Spanish policy in Cuba, contained in the American note of November last, was laid before the House of Representatives at Washington on Friday. Our readers are enabled to peruse these interesting documents in full, by the aid of the Atlantic cable, this morning, though they were only published in the United States on Saturday. Mr. Fish's dispatches to Mr. Caleb Cushing are unsparing in their condemnation of Spain, and are weighted with menaces directed against Spanish misdoing. But the indignation and reproaches of Mr. Fish have not been provoked only by the Madrid Government, and do not fall upon that Government alone. If it were merely administrative recklessness or political blundering that had been assailed the danger would be less, and some way out of the difficulty would at least be visible. But we know that the least justifiable acts of the Madrid Government, those most likely to provoke a collision with the United States, have fallen short of rather than gone beyond the arrogance of the national spirit. Spain is arraigned on as many charges as were solemnly paraded against George III in the Declaration of Independence, and each charge is pressed home with a vigor of rhetoric to which few parallels can be found in diplomatic history.

Yet, on the whole it must be allowed that Mr. Fish's able argument has a solid basis of justice, and that his conclusion is tempered with unexpected moderation. Summing up the general and special grievances relating to Cuba that the United States have alleged against Spain, Mr. Fish raises questions so serious as these: "How long this condition of things can or should be allowed to exist," and "whether a point has not been reached where longer endurance ceases to be possible." This ominous estimate of the relations between Spain and the United States is fortunately modified by the remedy to which, as it seems, the Washington Government are ready, at all events in the first instance, to resort. A copy of the American note was simultaneously transmitted to the capitals of the six European powers, and General Schenck was instructed to make a special communication to Lord Derby, suggesting a conjoint or, at least, a concurrent remonstrance and, as a "contingent necessity," a conjoint intervention for the restoration of peace in Cuba.

This remarkable correspondence can hardly fail to excite American politicians, not because there is likely to be any difference of opinion in the United States as to the iniquities of Spain, but because the policy of inviting the cooperation of the European powers is a bold departure from the political traditions of the United States. The invitation has not been addressed to Great Britain alone, but also to the Governments of France and Italy, and to the three Empires. This is manifestly an abandonment of the "Monroe doctrine" which has so long controlled American policy, and has disconnected it, at all events in theory, from the general web of political interests throughout the civilized world. To exclude from the American continent not only every advance by annexation or colonization of the monarchical powers of Europe, but every direct influence of those Governments for good or evil, was in substance the political dogma which takes its name from President Monroe. This monstrous pretension at the time when the Democratic party and the slave power were in close alliance had nearly assumed an aggressive form, and if events had not checked and rebuked it, would probably have tempted the Union into a ruinous filibustering policy.

The civil war prevented the United States from actively asserting the Monroe doctrine, though the intervention of France, England, and Spain in the affairs of Mexico excited vehement protests on the other side of the Atlantic. But Mr. Fish's invitation to the European powers, recognizing, as it does, the fact that the nations of Europe have interests to watch and defend on the American continent, mark very distinctly the progress of the people of the United States in political good sense. It is sheer folly for any country, however powerful and however confident in its destiny, to take upon itself to wall off half the world, and say to the commonwealth of nations, "You have nothing to do with all on this side." The claim is as inadmissible as that of the Holy See to partition the unknown lands of the East and the West between Spain and Portugal. The premises of the argument on which the

Monroe doctrine is based are unsound. It is not true that the nations of Europe, whom that doctrine would restrain from any interference in American affairs, have not a great deal to do directly with America. England and Spain, France and Holland, have their colonies on the mainland or in the Central Archipelago.

But, setting aside the fact that many of them are really thus American as well as European powers, they are all of them closely interested in the prosperity of the American communities through their commerce. But commerce even is only one of many bonds which are continually multiplying the relations of human societies. It is vain to think that any part of the work of the world can be isolated, as some American politicians labored to isolate the development of their continent. If it were possible to effect this, the injury to human progress would be incalculable, but a man might as well measure a square mile of the ocean and protest that it was his private property and that none of the unappropriated waves should presume to trespass upon it.

While, however, we can not refrain from expressing our satisfaction at the improvement of political thought in the United States upon this subject, and while we are sure that Mr. Fish's invitation will be courteously answered by Lord Derby and by the foreign ministers of the other European powers, it is not obvious that it is incumbent upon us to interfere in the dispute between Spain and her revolted colonists. If we choose to take the risks and responsibilities, we should, no doubt, be justified in intervening for the sake of humanity; but it is not the business of this country, nor, for that matter, any other, to play the knight-errant among nations. It is unlikely that we shall go beyond advice, if we go so far, unless we have suffered a wrong so serious as to touch the national honor or interests, and have been denied redress. We must confess it is for the American people to decide whether they have been injured and insulted so that "endurance is no longer possible."

The catalogue of offenses committed by Spain which Mr. Fish has elaborated in his dispatch is formidable in its appearance, and no doubt most of its particular charges can be proved. Some of them, as the delay in executing the stipulations of the Virginius treaty, the embargo and confiscation of property of American citizens, and their irregular and unjust treatment by Spanish military tribunals in Cuba, are apparently admitted by the Spanish Government. Others, as, for instance, the injury to American commerce, are open to question, and have, indeed, been keenly questioned in the United States. Others again, such as the cruelty and inhumanity of the war are no doubt to be deplored, but if repressed by foreign intervention must show some distinct menace of danger to the intervening power. On the whole, the grounds of complaint, so far as they are well founded, have exclusive reference to the United States and Spain, and third parties can not with any prospect of international advantage take part in the negotiations. The aggrieved and the offending powers must patch up their differences for themselves; for though Spain may be vexed at being rated and the United States may use harsh threats, the risk or loss if the disputants should try to settle the quarrel by force is too serious to be rashly incurred.

It is possible, however, that the European powers might help to promote a compromise which, while saving the honor of Spain, would put an end to the Cuban difficulty. The Anti-Slavery Society about a fortnight ago addressed a memorial to Lord Derby, in which it was asserted that the Spanish Government was willing to make great changes in the position of Cuba, giving the island the right of a self-governing colony, such as Canada or New Zealand, in the British Empire, but on condition that slavery might be retained. The Anti-Slavery Society protested against any sanction being given by the British Government to the latter stipulation, which, it was alleged, the United States Government had determined to reject.

It is noticeable that in Mr. Fish's note the example of the relation between Great Britain and her colonies is held up for approval and contrasted with the old despotic colonial system of Spain. If, then, the two Governments are agreed as to the end, there ought to be little difficulty in devising the means of execution. The theoretical question of slavery need occasion little controversy. Cuba with a practically independent legislature would soon find itself obliged to abolish the "peculiar institution." The island in all probability would be badly governed, but, at any rate, a hopeless, purposeless, fruitless war would be ended, Spain would be freed from a heavy burden without loss of honor, and the Pearl of the Antilles would be able to develop in peace her magnificent natural resources.

[Inclosure 2, in No. 860.]

Editorial London Morning Post, January 24, 1876.

The precise attitude of the American Government towards Spain in regard to the Hispano-Cuban affair is shown in the correspondence published at Washington.

It appears that on the 5th of November Mr. Fish sent a note to the United States minister at Madrid setting forth the views and demands of the Government on the

subject. There are reiterated protestations of friendliness toward Spain in both the note and observations of the minister in presenting it. If the action of America is friendly in this matter, Spain may well exclaim, "Defend me from my friends." Certainly the American idea of friendliness is sufficiently strange. Under any circumstances it would have been curious friendliness to have sent a communication of the kind; but to choose the moment of Spain's greatest trial and difficulty to send it was alike unusual and indefensible.

Let us see, however, what it is that America complains of and demands. Mr. Fish starts by making an admission that might have suggested to him the propriety of doing nothing to embarrass Spain; says that "the war on the part of the insurgents is one of pillage and destruction, which the United States are most interested in stopping." Is not Spain far more interested than America in stopping such a war? The "pillage and destruction," spoken of are much more injurious to Spain than to the United States, and as it is the insurgents that are giving this character to the war, it would be more fitting to seek to discourage and embarrass them than the Spaniards. The complaint is then preferred that Spain has "rejected all suggestions for reform, mediation, or reconciliation." What would America have said if Spain or any other country had offered to intervene between her and her own revolted provinces? Would she not have rejected the suggestion as lowering to her dignity and detrimental to her interests and authority? No one knowing America could doubt as to the answer that would have been given in such a case; yet here is America making formal complaints of her proffered interference having been neglected.

As usual, it is one law for America and another for the rest of the world. Mr. Fish then remarks that "the violation of treaty obligations" by Spain and "her unwillingness to afford redress" leads the American Government to ask if Spain's conduct is "any longer to be endured." Here, it will be observed, the American Government makes no distinction between a failure to carry on the due administration of a country, owing to sad misfortunes and crushing difficulties, and a willful "violation of treaty obligations" and an "unwillingness to afford redress." But, of course, the American Government is perfectly well aware that the Cuban difficulty is nothing as compared to the difficulty in Spain itself, and that the Cuban difficulty has existed so long solely on account of that other. America is aware, also, of the immense exertions and sacrifices made by Spain to overcome her various difficulties; and yet, just as Spain is on the point of directing all her force, so painfully accumulated, against the root of the whole evil, in steps the United States to distract her attention and compel a division of her force and resources in respect to a minor matter that would have been settled, and to much better effect, in its turn.

This is President Grant's idea of judicious and friendly action. Mr. Fish then goes on to tell Spain that while she insists that there is no war, she claims the rights of war, and that this can not continue. Even if this were strictly correct, would it lie in America's mouth to bring the charge? "Mutato nomine de te fabula narratur," is a proverb that applies exactly to this case. Mr. Fish then alludes to the precise claims that his Government has to make in the shape of the restoration of embargoed estates and the trial of American citizens; and as Spain at once agreed to do all that she could in the matter, America may have had some cause for complaint. But even so, would it not have been in better taste and equally effective if America had proceeded gently and really kindly in the matter, and had avoided a bullying tone and attitude toward a Government almost at its wit's end from a concatenation of trials and troubles? The United States foreign minister then proceeds to lecture Spain on "the interests of humanity," the treatment of her colonies, and slavery.

He seems to forget that probably America would to this day be exhibiting herself as of old the inhumanity of slavery but for the accident of the revolt of the Southern provinces. The way in which slavery came to be abolished in America must be looked to as well as the mere fact of the abolition. America is hardly the country to lecture another on the subject of slavery. Anyhow, America might have waited until after the suppression of the pillaging and destructive insurrection, until the civil war in Spain had been ended, and until the King and Government of Spain had had a fair opportunity of dealing with the question of the colonies, before lecturing and advising on the matter. The note winds up with the hope on the part of the President that "Spain may secure peace, otherwise he feels that it may become the duty of other Governments to interfere." On this point, Spain can reply that she is straining every nerve to secure peace; that foreign intervention does but encourage the rebels; that the action of the American Government has driven her to divert forces and resources to Cuba that ought to have been employed in crushing the Carlists, and that America has no commission to speak for "other Governments."

Such being the character of the note from the American to the Spanish Government, what are we to think of the injunction to Mr. Cushing to "assure Spain of the friendly disposition of the United States, which have no selfish object in view, and are moved solely by the necessity for self-preservation and the interests not only of humanity but of Spain herself." This is the friendship of the wolf to the lamb.

Luckily the wolf has got no teeth; America has neither army nor navy worth mentioning, and she can not even deal with her red Indians, who afford her a field for the practicing of the "humanity" that she would preach to others. America is good enough to inform Spain that she has no selfish motive, but "qui s'excuse s'accuse," why speak of the matter? Lastly, America tells Spain that intervention is not contemplated as an "immediate result, but only as a contingent on failure of other efforts." This is very kind of America; but people, interpreting for themselves her pettifogging selfishness, will be apt to reflect that without the permission and aid of "other Governments," America could not intervene at all, and that the "other Governments" will avoid hampering the hands and weakening the efforts of Spain at the very moment when she is in all sincerity, honesty, and diligence striving by every means to reestablish peace and order in her dominions both at home and abroad.

[Inclosure 3 in No. 860.]

Editorial from London Pall Mall Gazette, January 25, 1876.

THE UNITED STATES AND CUBA.

The note sent by Mr. Fish to Mr. Cushing for presentation to the Spanish Government is a singular combination of reasonable complaint and unreasonable declamation. The Government of the United States are entirely within their right in pointing out to Spain the inconvenience caused to American citizens by the civil war in Cuba and in warning her that unless redress can be obtained for the past injuries and some security provided against their recurrence they may be obliged to redress their own grievances by their own hands. No power can be expected to endure the unprovoked seizure of property legally possessed by its subjects, or the banishment of them without trial. There is no need in this case to consider whether the charges are well founded, because the Spanish Government admits that they are substantially true. In his telegram of the 4th of December last Mr. Cushing reports that the minister of state admits the American grievances, "is opposed on principle to the sequestration of the property of foreigners, condemns the delay of redress, and will take up and promptly settle each case."

If Mr. Cushing's remonstrances had gone no further than the ground covered by this reply, the question might be regarded as disposed of. That Spain can insure the United States from the annoyances which war necessarily inflicts upon mutual neighbors is impossible; but if she is in earnest in reducing these annoyances to a minimum she can greatly soften the legitimate irritation which now exists in America. But Mr. Fish's dispatch is much more comprehensive than the minister of state's reply. The sufferings of American citizens are thrown into comparative insignificance by the side of those higher considerations which Mr. Fish invokes. When the civil war broke out in the United States the Federal Government treated the belief expressed by individual Englishmen that the seceding States would eventually establish their independence as something not far short of an insult, for which the British Government ought to be held responsible. The Executive of the United States sees no harm in doing officially what it blamed Englishmen for doing in their private capacity. "More than five years since," writes Mr. Fish, "the firm conviction of the President was announced that whatever might be the vicissitudes of the struggle, and whatever efforts might be put forth by the Spanish power in Cuba, no doubt could be entertained that the final issue of the conflict would be to break the bonds which attached Cuba as a colony to Spain."

General Grant's convictions are his own property, and if he had expressed them as General Grant Spain would at most have had to complain of a violation of international decorum. But when the President of the United States convictions on the issue of a civil war are announced in formal dispatches they assume in some respects the character of active forces. If Spain had been strong enough she would have been perfectly justified in warning the United States that they must take their choice between active intervention or complete abstention. Nothing short of active intervention can be more unlike complete abstention than the attitude of a Government which cheers the Cuban insurgents with predictions that they must certainly succeed. Great powers do not love to see themselves proved false prophets; and it can hardly be questioned that one at least of the causes which have made the suppression of this insurrection so difficult has been the belief of its authors that in the last extremity President Grant would make good his words and help the Cuban rebels "to assume independence and a right of self-control which natural rights and the spirit of the age accord to them."

Of course, Spain had abundant reason for not taking up the quarrel; but what can be said of the diplomacy which revives the recollection of an insult offered in a dispatch the ostensible object of which is to obtain redress for injuries sustained? Either Mr. Fish is a singularly blundering workman, or at the time of writing his note of the 5th of November he had some other end in view than the mere redress of grievances, which is all that he explicitly demands. When it is remembered that the substance of the dispatch was communicated to the American newspapers on the eve of the November elections, and that the subject thus suddenly brought to the front has since been allowed to drop out of notice, it is not an unnatural inference that the effect of the note on the American electors was more in Mr. Fish's thoughts than its effect on the Spanish Government.

The result has been that the American electors have shown themselves wiser than their guides. Whatever force there may prove to be in the plea that General Grant must be elected President a third time in order to carry on a war with the Vatican, there is seemingly no popular conviction that it is worth while to provoke a war with Spain in order to overcome the prejudice against a third term. It does not indeed require any keen political acumen to detect the difficulties which surround both the alternatives suggested in Mr. Fish's dispatch. It is a cheap exercise of international officiousness to hope that Spain may spontaneously adopt measures for the organization of a stable and satisfactory system of government in Cuba, but if Mr. Fish had to state in words what the measures in question should be, the impossibility of framing them would be at once apparent. If Spain succeeds in putting down the insurrection, a stable government of a certain kind may be established. If the United States go to war and annex Cuba, a stable government of a certain kind may be established.

But to talk of a stable government in an island in which the passions excited by quarrels of race, of color, of social position, have raged with scarcely any restriction for more than five years, while proclaiming in the same breath the impropriety of these passions being subdued by the hand of any external power, is to use words which have no meaning. The concession of independence to Cuba might mean peace as between the mother country and her emancipated colony, but it would not mean peace in Cuba itself. On the contrary, it would only mean war, renewed with greater determination, and conducted with greater fierceness, between the insurgents and that part of the population which, as Mr. Fish very truly puts it, "has sustained and upheld, if it has not controlled, successive governors-general." How this conflict would end we do not pretend to say, but it is safe to predict that while it lasted it would be characterized by yet greater atrocities, and inflict yet greater annoyances on foreign residents than the war which has gone on so long.

After a time the exhaustion of resources and the partial extermination of the fighting population would bring active hostilities to an end; but the experience of West Indian and South American independence does not make their subsequent resumption at all unlikely. It is to create this sort of wilderness within sight of the United States that the American people were invited to run the risk of a war with Spain. For that a war with Spain involves very grave risk to the United States is undoubted. At the outset of a contest which can only be carried on at sea the comparative wealth, numbers, and resources of the combatants go for little, except so far as they are embodied in actual ships.

The power of Spain, such as it is, is so embodied; the power of the United States is not; and it is at least possible that the first act of a war between the two countries might be the bombardment of every American seaport. It does credit to the good sense of the American people that they have not cared to run this risk for the doubtful benefits of annexing an island which they do not want and being ruled for four years longer by General Grant.

[Inclosure 4 in No. 860.]

Editorial from the London Times, January 26, 1876.

In Europe at least there will be a tendency to do injustice to Mr. Fish's indictment of Spain, precisely for the reason which may render it effective among his own countrymen. When American diplomacy states a complaint, it usually makes a large call on those general terms of invective which please half-educated readers, but shock the taste and rouse the suspicions of the more fastidious students.

Critical minds are apt to fancy that the rhetoric has been framed for the purpose of touching the Americans themselves, and when they mentally translate it into scholarly English they tend to cut away much of the truth as well as to improve the style. We speak the more frankly because Mr. Fish seeks to obtain the moral support of European countries in his contest with the Spanish minister of foreign affairs respecting the civil war in Cuba. He would, we assure him, have been much more

effective if he had given specific examples of the wrongs or hardships suffered by his countrymen and left his readers to supply general phrases of indictment. Nevertheless, there need be no doubt that his charges are substantially just, and the truth itself is so grave as to need little ornament from rhetoric.

In Cuba Spain owns one of the fairest and most fertile islands in the world, and it has been detestably misgoverned. While we have allowed our colonies to rule themselves in their own way, Spain has persisted in keeping Cuba in the same state of tutelage as when she herself was the greatest power in the world, and when the very idea of colonial rights had scarcely arisen. The island has been dependent on the will of a Government changed every few years by a pronunciamiento or a popular revolution. It has been used as a place of honorable banishment for unruly soldiers. The dangerous spirits of the army have been sent to Cuba to be kept out of mischief, and they have let loose in the colony the temper which had been found perilous at home. Freed from responsibility, they have often displayed a repetition of that domineering spirit, that contempt of the rights of others, and that cruelty which once added dark chapters to the history of the Spanish conquest. The slaughter of the crew of the *Virginius* was an act which would have been quite natural three centuries ago, but which, when committed in our time, seems wonderful on account of its folly as well as of its atrocity. If the author of such a deed had been an Englishman, he would assuredly have been hung; yet he is still at liberty, and we believe he has still some kind of command.

We can not wonder that Mr. Fish, who speaks for a people as proud in their own way as the Spaniards and immeasurably more powerful, should peremptorily demand the trial of General Burriel. America has also many other causes of complaint. Her citizens owned much property in Cuba, and a great deal of it has been confiscated by the Spanish Government. Restitution has been promised and evaded. Americans, Mr. Fish thinks, have been wrongfully condemned by the insular courts, and they have failed to obtain redress. The Spanish Government has violated its treaty obligations. Still more serious is the injury which it has done to Cuba, and indirectly to America, by the savagery of its warfare. It is laying great part of the island absolutely waste, and thus injuring the interests of the United States in order to maintain slavery and Spanish rule. Nor does Mr. Fish believe that the rebels can be put down, and therefore he calls upon the Government at Madrid to give Cuba at least those privileges of self-rule which have had an admirable effect in the colonies of this country.

It will be very difficult to answer an indictment so formidable in itself and ending in so mild a demand. The purists of international law may at once be warned off the field of discussion. They may say that the United States has no more right to dictate how Spain shall govern Cuba than Spain has to order the reorganization of the South. They may say that the American citizens who live in Cuba went there at their own risk, and must bear the inevitable penalties of civil war. Much the same fate, it may be pleaded, would have come to any Spaniards who had owned property in Virginia during the war between the North and the South, and yet they would have received no redress. Nor, it might be added, were either the Confederate or the Federal cruisers particularly respectful of foreign rights in their efforts to destroy each other. But these arguments are fit merely for lecture rooms. The practical answer is that the general rules of international usage, conveniently called international law, can be applied only to ordinary cases of warfare. Since there is no international parliament, each nation is justified in defending its interests by exceptional measures when they are attacked in an exceptional manner.

Mr. Fish may plead that international law presupposes the power or the readiness of States to be guided by the ordinary rules of civilized morality, and that in her relations with Cuba Spain has systematically set those rules at defiance. The case of the *Virginius* was such an outrage on the usual laws of warfare as to debar her from afterwards invoking them on her own behalf. The duty, therefore, of the United States must be determined, not by the letter of international law, but by general considerations of policy. We find, then, that Spain has driven one of the finest islands in the world into revolt; that she is trying to suppress the revolt by systematic savagery; that she refuses to promise the colonists any form of self-government, and that the restoration of peace by mere force is all but hopeless. The Spanish minister of foreign affairs has promised, it is true, that justice shall be done to those American citizens who have been wronged, but he does not offer to remove the real cause of strife by abolishing slavery or allowing the colonists to rule themselves. We can scarcely expect Mr. Fish to be satisfied with the repetition of a pledge which has already been broken, or with less than the pacification of the island itself. Nor can we blame him for insisting that if Spain will not set Cuba free, she is bound to make it orderly; but at the same time we can not admit that there is any need for war.

America is acting with at least as much moderation as this country would display if Cuba were as near to Cornwall as it is to Florida. In such a case we should require Spain to protect the property of our countrymen and to take the obvious

means of restoring her colony to a state of peace. The rhetoric of an English dispatch would be more measured and precise than that used by Mr. Fish, but it would lead to demands at least as keen. On the other hand, the dispute is one of those which may be arranged without war, or even without the formal intervention solicited by America. The representatives of foreign States at Madrid will, of course, discuss the quarrel with the Spanish ministers, and they can not fail to point out with friendly politeness the folly of the outrages inflicted on American citizens. They will also be able, we should hope, to show the necessity of granting reparation.

In the course of the negotiations with America, the Spanish ministers may likewise be brought to see that they must grant some form of self-government to the revolted colony. The representatives of friendly States can easily show the Spanish ministers, without the formality of intervention, that it would be no discredit to grant reasonable demands, especially when they have been put forward by a State which would in the long run be a match for Spain, even if she were as powerful as she was in her imperial days. It ought to be the more easy to give and take advice, because the United States is manifestly eager to avoid extremities, and would be glad of any reasonable compromise.

On the other hand, the Spanish people are as ignorant as they are proud, and it will need more courage than their ministers usually display to tell the Cortes what is the real state of Cuba and what is the sole remedy for misrule.

Mr. Schenck to Mr. Fish.

No. 862.] LEGATION OF THE UNITED STATES,
London, January 28, 1876. (Received February 12.)

SIR: In a dispatch sent yesterday I informed you that I had had another conversation with Lord Derby on the subject of our relations with Spain and the condition of affairs in Cuba.

The interview took place three days ago (25th), but I have waited until I could report his lordship's language in his own words, and it was only last evening that I received from him a memorandum which he had promised, enabling me to do so.

* * * * * * *

I began by reading to his lordship a copy of the cable telegram I sent you on the 2d of December, reporting what he had said to me at that time. He remarked that "nothing could be more accurate" than my statement of his own language, and at once added that he "still remained in the same view as to any intervention."

We had then a conversation of some length. I called his attention to the fact that the text of the President's message, as he must have observed, corresponded strictly and in all points with the assurances and explanations which I had been instructed to give him in advance of its delivery; that the President had discountenanced any present recognition of the independence of Cuba, or recognition of belligerent rights to the insurgents; that the United States desired no rupture with Spain, nor any but the most friendly relations; that any earnest movement on the part of the Government at Madrid to satisfy the just demands of the United States and to put an end by some effective plan of pacification to the deplorable condition of affairs in the island would be gladly hailed and met by us in the most cordial spirit, and that mediation or intervention by other powers was only contemplated as an ultimate necessity. His lordship admitted that such was the tenor and spirit of the message. I told him that the later note from the Spanish Government, to which Mr. Layard had referred as likely to afford a basis for adjustment, had failed to furnish any reason to the President for a modification of the views which he had resolved to express and did put forth in his message; and that indeed the communication, while it afforded hope of a settlement of the particular grievances of the United States, appeared to leave the general question where it was.

Our special causes of complaint and reclamation against Spain for the wrongs done to our citizens and their property I said was, of course, our own concern, and would be taken care of by ourselves, but the interests of humanity, national friendship, and the peaceful security of commerce were all involved in the question of the pacification of the island.

Incidentally I ventured to allude to the opportunity which might, in this connection, be afforded to Her Majesty's Government to manifest their known desire to cooperate by their influence in putting an end everywhere to the institution of slavery.

I referred to the disposition, as learned from Mr. Cushing, of the British minister at Madrid to back him in the matter of Cuba, if a line of action could be agreed on between our two Governments; and I desired to know whether any definite instructions had been given, or would be sent to Mr. Layard tending in that direction.

I was enabled also—having reference to Mr. Hitt's dispatch communicated to me with your No. 833—to say that I had reason to know that France was favorably disposed toward some form of friendly mediation, but that her decision was, to a degree at least, dependent on the course which the Government of Great Britain might adopt.

Lord Derby said in reply, and I give in what follows the succinct statement of his views, as furnished by his own memorandum, that—

The questions with which the United States Government were dealing—the redress of the grievances of American citizens, and the proposal to put an end to the war by mediation—seemed to him to stand on an entirely different footing. In regard to the first, the United States Government had put forward claims which, assuming them to be just in substance, they were entitled to press as a matter of right. In regard to mediation, though everyone could understand the inconvenience and damage to American interests produced by the continuance of the war, yet, strictly speaking, it was not easy to see how any foreign power could claim a right of interference.

They could give friendly advice, but it would rest with the Government of Spain whether to take or to reject it. Lord Derby could only repeat what he had said at a former interview—that, in the interest of humanity and in view of the injury produced by the war, he would be glad to offer the good offices of England to bring about a reconciliation between Spain and Cuba.

But Her Majesty's Government were not prepared to bring pressure to bear on that of Spain, in the event of their overtures being rejected; and that being so, he was unwilling to take any step without having, he would not say a certainty, but a reasonable probability, that some good result would follow. After his former interview with General Schenck, he had consulted Mr. Layard, Her Majesty's minister at Madrid, and that gentleman in reply had expressed a strong opinion that no attempt at mediation by a foreign power was likely to succeed at the present time. Lord Derby agreed with Mr. Layard in this view. He knew, as did also General Schenck, the extreme pride and sensitiveness of the Spanish character, and he was aware that the mere suggestion of foreign interference had produced an outbreak of indignation at Madrid. He was convinced that at this moment Spain would listen to no proposal of mediation.

The Spanish Government hoped to finish the Carlist war in the spring, and would then be free to put forth their whole military strength for the reduction of the island, in which they confidently hoped to succeed. They might be disappointed in both expectations, and Lord Derby thought it not unlikely that they would be so, but they certainly would not abandon the idea of crushing the insurrection without further trial.

Lord Derby thought therefore that if nothing were contemplated beyond an amicable interposition, having peace for its object, the time was ill chosen and the move premature.

He had some reason to think that this was also the view of the French and German Governments.

* * * * * * *

I will only add that the general tone and manner of Lord Derby was obviously in sympathy with the idea that it was incumbent on Spain to take as early as possible some decided step in the direction of a reform of her policy toward Cuba. The practical difficulty in opening

the subject to her, and in any action to be taken by her Government, lay in the pride and ignorance of her people. He evidently thought that, without any direct offer of mediation, some wholesome influence might perhaps be exercised over the counsels of her ministers by the representatives of friendly powers at Madrid.

I have, etc.,

ROBT. C. SCHENCK.

Mr. Schenck to Mr. Fish.

No. 863.] LEGATION OF THE UNITED STATES,
London, January 31, 1876. (Received February 16.)

SIR: With my No. 860 I sent you among other articles of the English press commenting on your dispatch of the 5th of November to Mr. Cushing on the subject of Cuba, one extracted from the London Times of the 26th instant, to which I directed your particular attention. It may interest you to read the comment of the Pall Mall Gazette on that Times article, which I now inclose. This reply sets up a question about the obligations of international law, for disregard of which it would take the Times to task. I still think the views of the Times are those which are most in harmony with those entertained at the foreign office.

I inclose at the same time a short article on Cuba, taken from the Evening Standard, which is a high Tory paper; and also a scrap from the Spectator, a weekly paper which is considered liberal.

I have, etc.,

ROBT. C. SCHENCK.

[Inclosure 1 in No. 863.]

Article from the Evening Standard, London, January 29, 1876.

The Cuban insurrection is as long lived as the Carlist revolt. There is no calculating the amount of blood and treasure which have been drawn from the mother country to restore quiet to the island within the past few years. Reenforcements of troops have been sent periodically from Cadiz and Santander, not a tithe of whom will ever see Spain again; captain-general succeeds captain-general with the regularity of clockwork, and notwithstanding the end never is, but always to be. The insurgents are beaten on the average twice a month, yet somehow they always turn up in excellent health and spirits as if they thrived on repeated defeat. It is very difficult to get at the truth about Cuba; but one prediction may be made with safety: As long as Don Carlos parades Navarre and the Vascongadas, the pacification of Cuba will be adjourned. No Spaniard with the spirit of a true hidalgo will allow for a moment in public controversy that his country can part with the island, and yet there is scarcely one traveled and educated Spaniard, we venture to affirm, who will not admit in the intimacy of private conversation that his country can not hold the island. If we are to credit a statement of the grievances of the Cubans published in the Paris Temps yesterday evening, Spain deserves to lose the rich possession which she has held and misgoverned since 1511.

According to this document, the island contains nearly a million and a half of people, a quarter of them European Spaniards, birds of passage, desiring to make a fortune and then return home; another quarter negroes, and the other half natives—the offspring of creoles, colonists, or foreigners. Cuba returned deputies to the Cortes till 1837, when it was deprived of its representation and subjected to special laws. This course was instigated by the then Governor-General Tacon, influenced by the Catalans, who carried on the slave trade and were afraid the deputies would denounce their trade, and the monopoly of the resources of the island by Spanish adventurers. The colonists vainly protested; their hopes of a separate constitution were disappointed, and in 1851 there was a rising, aided by American filibusters, which was easily suppressed. In 1865 Marshal Serrano assured the Cubans that they would soon be again represented in the Cortes; but the reactionaries and slave

owners sent emissaries to Madrid to prevent any reform, and their efforts led to nothing being done but the appointment of a packed commission of inquiry, which sat with closed doors at Madrid.

The Cuban delegates showed that the island was depopulated, and might support 16,000,000 of inhabitants; that scarcely a tenth of the land, the most fertile in the world, was cultivated; that no roads existed except the few made by the colonists; that the judicial and administrative authorities were corrupt; that there was an absence of all freedom; and that the enormous taxation levied was expended in Spanish expeditions to Santo Domingo and elsewhere, and in lavish official salaries. Spaniards very often, we are afraid, rule Cuba, not in the interests of Cuba, or of Spain, but of themselves. They go there, not to settle down and become industrious dwellers therein, but to "make a pile" and depart. Some of the grievances under which the island labored have been removed, but most of them are still unredressed. The revolutionists, on whom the shoe pinches, may be excused for their resistance to their taskmasters; but assuredly under no circumstances is the interference of roving Yankees in the concerns of other people to be excused, much less applauded.

THE UNITED STATES AND CUBA.

The Spectator says that Englishmen may be paying too little attention to the relations between Spain and the United States. If the documents just presented to Congress are serious at all, they are most important documents, and we incline, after making every allowance for the necessities and peculiarities of President Grant's position, to believe that they are more serious than is generally imagined. It is perfectly possible that General Grant has decided in his own mind that he will not quit office without inflicting punishment on Spain, and that he has renewed his complaints with an intention of making them heard, and that he is now deliberately warning Congress, the American people, and the European States that he means to have either redress or war.

He may be trifling with the world, but it is much more probable that he is not; and if he is not he is taking precisely the steps European diplomatists would expect. He is demanding definitely and distinctly a just thing, the trial of General Burriel, which the Spanish Government can not, without risking a collision with the volunteers, concede, except on paper. He is telling Madrid in the plainest words he can use that unless he can obtain redress he shall propose to resort to force.

It seems to us that to imagine President Grant, with a Democratic majority in the House of Representatives, a great Spanish fleet in the harbor of Habana, and the Presidential convention almost at hand, is doing all this in order to court a slap in the face from Madrid, a slap which, unresented, would send him on his retirement into a discredited obscurity, is almost absurd; and if he is in earnest the situation is most serious. It is all very well to talk of the American Constitution and the Democratic majority and the absence of material preparations in the United States. The President can order any movement, either of fleet or army, that he pleases. The Spaniards are in no humor to bear interference, and if they defy the Union neither Democrats nor Republicans will remember party squabbles. They might refuse the President his third term, and might be ready to hang him, but they would plunge into war with none the less fierceness and carry it on with none the less decision. They know perfectly well that they might and would suffer at first, but they believe that within six months every spare ironclad in the world, including, perhaps, half the Turkish fleet, would be in their hands; that Cuba would be full of western soldiers, and that the Spaniards would be vainly endeavoring to shield their own harbors from attack.

[Inclosure 2 in No. 863.]

Article from Pall Mall Gazette, January 29, 1876.

THE VALIDITY OF INTERNATIONAL LAW.

There is nothing in which English writers ought to be more guarded than the discussion of the principles of international law. By slow steps a limited number of principles regulating the intercourse of nations in peace and war have been accepted by the civilized world, and, taken as a whole, those principles constitute a main defense of the commercial nations against the military nations. Of the former class England is the most powerful representative, and her voice is still potent enough in the counsels of aggregate Europe to forbid any relaxation of rules that experience has shown to be beneficial in their regulations of the conduct of nations toward one another. At the same time it is plain that some of the great military powers feel themselves hampered in their policy by these same rules, and would be well pleased

if they could procure the revision of them by a general international agreement, or, better still, if they could bring it to be understood that the rules were not of universal application, but, while applicable to normal cases, might be modified or dispensed with whenever the circumstances were in any way extraordinary.

A State may do this at present, but it is at its own peril; it incurs the risk of that moral censure which even the German Empire does not wholly disregard, and it is likely to arouse a jealous and vindictive feeling among neighboring States who consider the rules of international law as their best security against aggressive surprises. But if the right of free interpretation were once conceded, pretexts would never be wanting for the suspension or modification of the ordinary rules of international law whenever strong powers found those rules embarrassing.

In commenting upon Mr. Fish's Cuban dispatch the other day the Times exhibited this danger in a very striking manner. The remarks of the Times are often supposed by foreigners to correspond with some intentions of English statesmanship, and a really injurious mistake may originate in what is merely the verbiage of misapprehension. The American demands upon Spain are evidently the more satisfactory to our contemporary because they coincide with and sustain the truculence with which the Madrid Government was rated the other day for its complicity in the misdeeds of the Carlists on the coast of Biscay.

We are told what is quite true, that it will be very difficult for Spain to answer Mr. Fish's indictment; but it is added, suspiciously, "The purists of international law may at once be warned off the field of discussion." But why? Of what offensive intentions are these "purists" suspected? They may, it seems, suggest as an answer to Mr. Fish's charges that "the United States have no more right to dictate how Spain shall govern Cuba than Spain has to order the reorganization of the South;" and they may point out imaginary parallel cases in which Spanish subjects injured by civil warfare in the United States would be left without redress. But the writer goes on to say, "These arguments are fit merely for lecture rooms. The practical answer is that the general rules of international usage, conveniently called international law, can be applied only to ordinary cases of warfare. Since there is no international parliament, each nation is justified in defending its interests by exceptional measures when they are attacked in an exceptional manner. Mr. Fish may plead that international law presupposes the power or the readiness of States to be guided by the ordinary rules of civilized morality, and that in her relations with Cuba Spain has systematically set those rules at defiance. The case of the *Virginius* was such an outrage on the usual laws of warfare as to debar her from afterwards invoking them on her own behalf. The duty, therefore, of the United States must be determined, not by the letter of international law, but by general considerations of policy."

The writer supposes that "the general rules of international usage, conveniently called international law, can be applied only to cases of ordinary warfare." Obviously, according to this view, there are no such rules applying to a state of peace or to disturbances not recognized as belligerency. But next we come to a naked assertion of the interpretation of the freedom for which the great military governments are anxious. How easy it would be for a power with an overwhelming army to prove to its own satisfaction that "its interests had been attacked by exceptional measures," and must be "defended in an exceptional manner;" that is, without reference to any precedents or accepted principles of international law. Can we not imagine the scope of this pretension serenely extended by Prince Bismarck over Belgium or Switzerland? Might not Prince Gortschakoff, just as well as Mr. Fish, plead that "international law presupposes the power or the readiness of States to be guided by the ordinary rules of civilized morality," and declare that Turkey had placed herself outside the pale of those rules by ceasing to be rigorously virtuous? Perhaps, however, the most curious application of this new method of treating international law is the assertion that because Spain behaved badly in the affair of the *Virginius* she became henceforth and forever an outlaw among nations, excluded from any advantages that international law secures to more respectable governments.

This is a hard saying. Are we to understand that one violation of an acknowledged international rule by a State excuses other States from paying any regard to rules at all in their relations with the offender? If it does not mean this, what are the limits of its meaning? "Not the letter of international law, but general considerations of policy" are to govern the conduct of the civilized world toward a State that once breaks the law itself. This sort of reasoning would justify us in refusing to protect a convict from the brutality of his warders on the ground that he had no right to appeal to the protection of the law he had broken." "General considerations of policy" will, in practice, mean the interest and convenience of the State that proclaims itself aggrieved, but when we ask why these should override "the letter of international law," we must remember what international law is. Although it is not law in the strict sense of the term, it is, as Professor Cairnes says, "the formal expression of the public opinion of the civilized world respecting the rules of conduct which ought to govern the relations of independent nations, and is consequently

derived from the source from which all public opinion flows—the moral and intellectual convictions of mankind." It is surely no more desirable that this public opinion should be set at naught by the interest or convenience of a particular State than that a particular individual should be considered justified in modifying to suit his own inclinations or objects the accepted morality of the society in which he lives.

Mr. Schenck to Mr. Fish.

No. 865.] LEGATION OF THE UNITED STATES,
London, February 1, 1876. (Received February 16.)

SIR: The question of the relations between the United States and Spain continues, in some form, almost daily to occupy the attention of the English public and press.

The interview represented as having been held with you by a reporter of the New York World has been this morning the subject of a long editorial comment in the London Times, and I send you herewith the article, which you may take some interest in reading, even if you should not think it of value enough to be preserved.

I have, etc., ROBT. C. SCHENCK.

[Inclosure in No. 865.]

Article from London Times, February 1, 1876.

When it became known in the United States that the State Department at Washington had invited the cooperation of the European powers in the difficult task of bringing Spain to reason there was a thrill of mingled surprise and relief. "What has become of the Monroe doctrine, then?" was the first question that caught hold of the public mind. If, however, the opponents of General Grant's Administration had hoped to create any embarrassment for the Republican President and his ministers by raising and pressing this question their expectations have not, apparently, borne fruit. We should by this time have had news of an agitation of popular opinion if any such movement had occurred, for, though the full text of the dispatches sent by Mr. Fish to Mr. Cushing and General Schenck were only laid before the House of Representatives on the 21st of January, it was well known and was not denied by the organs of the Government that the right of the leading European powers to interfere in the politics of the American Continent had been recognized, and in some sense invited, by the Department of State.

We published yesterday the report of an interesting interview with Mr. Fish, which must of course be received with a cautious reserve, since it is vouched for only by a powerful Democratic journal, the implacable enemy and unsparing critic of the Republican Administration. The statements, arguments, and explanations attributed to the Secretary of State are not, however, palpably spurious; they are very much what we should be prepared to find an astute statesman advancing who felt it incumbent upon him to respect popular prejudices while receding from an untenable position and "minimizing" obsolete principles.

Mr. Fish, if we accept the testimony of the "interviewer," frankly admitted two days before the presentation of the correspondence to the House of Representatives that he had invited the European Governments to examine and consider the actual state of things in Cuba, with a view to their aiding the United States, to use Mr. Fish's words, "in our appeals to Spain, on purely right grounds, without any prejudice in our favor whatsoever."

This admission hardly goes so far as to disclose the solicitation contained in the dispatch to General Schenck, in which Mr. Fish suggests that "the Government of Great Britain may possibly, of its own accord, think proper in view of its own interests, to cooperate with the United States in this effort to arrest the cruel war of devastation; humanity, its own great interests, and regard for the preservation of the peace of the world, will, it is believed, without doubt, lead it to support the position which this Government has at length been forced to assume, and to address its representative at Madrid to that end." But the definition of his diplomatic course given by Mr. Fish would be quite sufficient to kindle a popular clamor if the Monroe doctrine, as generally understood, had kept its hold upon the imagination

of the American people. It was in fact interpreted to signify a deliberate attenuation, if not a direct surrender, of that famous political dogma; and Mr. Fish, while he labors to show that he holds to the traditional policy of his country, is so careful to cut away all the modern and popular developments, accretions, and extensions with which the principles laid down by President Monroe in 1823 have been supplied that he leaves almost nothing as the essence of the doctrine so long proclaimed to be the keystone of American liberties.

To prove his case and defend his departure from what has been, at all events, supposed to be the tradition of American policy, Mr. Fish adroitly opens a curious historical controversy. He boldly turns the tables on all European critics of the Monroe doctrine with the assertion that the real author of the principle enunciated in President Monroe's message was neither the President himself nor, as has been more commonly accepted, his Secretary of State and successor in the Presidential office, John Quincy Adams, but, of all men in the world, Mr. Canning. The revelation is astounding. Are we, then, to believe that the statesman who boasted, in the name of his country, that he "called the New World into existence to redress the balance of the Old," was so heedless of the consequences of his acts that, having created a new order where chaos had reigned previously, he was willing to assent to a pledge excluding the creating power from any regulation of the created elements, whatever might be their confusion or conflicts?

This is almost incredible, and we have, moreover, some recollection that Canning more than once protested against the restrictive and exclusive policy on which the Government of President Monroe seemed disposed to insist. But when we look at the evidence on which Mr. Fish asserts that Canning was responsible for the Monroe doctrine, even in its original and narrowest form, we are astonished at the intellectual audacity of the attempt to give the irrelevant relevancy by dint of stout affirmation.

The Monroe doctrine, as laid down in the message of December 2, 1823, plainly warns the European powers that the American Government would "consider any attempt to extend their system to any portion of this (the Western) Hemisphere as dangerous to our peace and safety." The President was good enough to assure the European powers that no interference with the "existing colonies or dependencies" was intended; "but," he added, and this is the kernel of the "doctrine," "with the Governments who have declared their independence, and maintained it, and whose independence we have, on great consideration and just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States." Mr. Canning was certainly adverse to Spain and friendly toward the revolted colonies of Spain; but even if his feelings had warped his judgment, he could hardly, one might feel sure, have advised the American Government to warn us of "any interposition for the purpose," not only, be it observed, "of oppressing" the States that had asserted their independence, but even "of controlling them in any other manner." Turning, however, to Mr. Fish's citations from the account given by Mr. Rush, then American minister at the Court of St. James, of his conversations with Mr. Canning, we discover what it was that the English statesman actually said. He gave, as we should have expected, sound, sensible, spirited advice, with not a single word in it that could justify the pretensions of President Monroe's message.

He pointed out that the United States was deeply interested in the struggle between Spain and her revolted colonies, and that the American Government had an irresistible claim to make its influence felt in proportion to its interest in the strife. He urged that Europe should recognize this claim in all dealings with American politics, but he assumed that such dealings there must be. He upbraided the American people with their indifference to the interference of the European monarchies in the political arrangements of the New World, but the remedy he advocated was not the surly isolation insisted upon by Monroe, but a cordial and steady cooperation between England and the United States as a counterpoise, not in prohibition of the influence of other powers. These are Mr. Canning's words, and nothing could be less open to misconstruction: "Had not a new epoch," he asked Mr. Rush, "arrived in the relative position of the United States toward Europe which Europe must acknowledge? Were the great commercial interests which hung upon the destinies of the new continent to be canvassed and adjusted in this hemisphere without the cooperation or even the knowledge of the United States? Were they to be canvassed and adjusted, he would even add, without some proper understanding between the United States and Great Britain as the two chief commercial and maritime States of both worlds? He hoped not; he would wish to persuade himself not."

This was Canning's conception of the attitude which the United States ought to have assumed in American affairs and in their relations with the European powers. Three months later came President Monroe's message, with the doctrine which Mr. Fish asserts to be traceable to Canning's suggestion, but which seems to us, accord-

ing to the obvious construction of language, not to be reconcilable either in terms or sense with Canning's words.

Unfortunately the theory as defined by Adams and enounced by Monroe became further corrupted in the popular politics of the United States until it degenerated into a crude and barren cry of "America for Americans." In practice the good sense of American statesmen mitigated its mischiefs and absurdities, though its pretensions hampered their freedom of action injuriously and kept many perilous questions open that might have been usefully closed by diplomacy. As Mr. Fish tells us, "the very next year after President Monroe advanced that doctrine the United States asked Russia to mediate with Spain to stop the war between Spain and the South American Governments, whose independence the United States had acknowledged."

But the effect of the Monroe doctrine was, on the whole, so pernicious, especially in its moral influence over the American mind, that we decline to admit the fathering of it upon Canning. It produced at the time of the Mexican expedition a rankling indignation at imaginary wrongs that would never have come into being if that unlucky experiment in politics had been looked upon without jealousy. Many Americans came at length to believe not only that the Monroe doctrine was a law of nature, but that the existence of the British colonies, the Spanish colonies, the colonies of France and Holland, and the Empire of Brazil upon the soil of the Western Continents was an insupportable outrage. From these exaggerations of an originally foolish claim we are glad to see that Mr. Fish has withdrawn, and that he shapes his policy rather by the precedents of President Monroe's Administration than by the principles laid down in President Monroe's message. The invitation addressed to the European powers is declared by Mr. Fish to fall outside the scope of the Monroe doctrine, because Cuba is still technically a "colony" of Spain and has not succeeded in asserting her independence. But the spirit of President Monroe's message clearly would exclude the interference in Cuba of any other European power but Spain, for no other can claim the locus standi of an existing possessory interest. This spirit Mr. Fish has utterly cast out, and if he be willing practically to read the Monroe doctrine backward and to interpret it according to the counsels of Canning, which the original dogma directly traversed, we shall not grudge him success in his efforts to preserve the appearance of consistency.

Mr. Fish to Mr. Schenck.

No. 847.] DEPARTMENT OF STATE,
Washington, February 21, 1876.

SIR: I inclose herewith for your information a copy of a dispatch of the 23d of January last, No. 1279, from Mr. Hitt, chargé d'affaires ad interim at Paris, which contains an account of a recent interview between himself and the Duke Decazes in relation to the Cuban question.

I am, sir, etc.,

HAMILTON FISH.

ITALY.

Mr. Fish to Mr. Marsh.

No. 503, of November 15, 1875, and telegram of December 13, 1875. (Same as No. 756, of November 15, 1875, and telegram of December 6, 1875, to Mr. Washburne, pp. 98, 99.)

Mr. Marsh to Mr. Fish.

[Telegram.]

ROME, *December 14, 1875.*

Italian Government will instruct minister at Madrid to take favorable opportunity to urge expediency of fulfilling duties of Spain to United States, and of pacifying Cuba, without specifying measures.

MARSH.

Mr. Marsh to Mr. Fish.

No. 585.] LEGATION OF THE UNITED STATES,
Rome, December 14, 1875.

SIR: Your telegram of the 13th, directing me to carry out instruction No. 503, reached me at 1 o'clock in the night of the 13th-14th instant. At an early hour in the morning I asked, by note, a special interview with the minister of foreign affairs. This was appointed for the afternoon by him, and I accordingly had a full conversation with Mr. Visconti Venosta on the subject of the instruction to Mr. Cushing.

I thought it, on the whole, expedient to make full notes of the contents of the instruction and to read them to the minister, with such brief oral explanations as suggested themselves, instead of literally reading the whole instruction, conforming myself, however, as closely as I was able, to the tenor of the instruction.

The only point of importance on which I added anything beyond mere verbal explanations and suggestions and statistical facts was in regard to the alleged desire of the United States for the annexation of Cuba, which is widely believed in Europe to be the guiding motive in all the action of the Federal Government in its relations with Spain. I stated that the editorial tone of many journals in the United States, and that of many articles in journals not professedly advocating the annexation, was prompted by fraudulently naturalized Cubans, refugees, and other persons interested in severing the connection between Spain and Cuba; that I knew no reason to think that the general population of the United States, still less the more enlightened and patriotic classes, desired the possession of the island, and that I did not in the least doubt the sincerity of the President's disclaimer of such a wish; and I observed that the abolition of slavery in the United States had destroyed the force of the motives which led Mr. Buchanan's Administration to propose the purchase of Cuba, and had rendered the annexation of the island no longer specially desirable as a political object to any section of the United States.

I referred also, by way of illustration, to the pretense of French, and to some extent of Italian, journals that the intervention of the Emperor Napoleon III in Mexico was rendered necessary by the ambitious views of the United States in regard to territorial extension, and pointed out that after the capture of the City of Mexico by General Scott we were virtually in possession of the whole country, and could have retained it if we had so desired, but that we voluntarily surrendered it, retaining only California and some other territory then thought to possess little value, and paying to Mexico a large sum as an indemnity.

I also thought it not disrespectful to the Administration to allude to the unworthy suggestion constantly made in Europe, that the late action of the Government in the matter has been a mere "electioneering maneuver," by pointing out that the character of the present Administration warranted no suspicion of such motives and that in the present condition of political parties and of public opinion in the United States the measure in question could serve no such purpose and be designed for no such end.

I have, etc., GEORGE P. MARSH.

PORTUGAL.

Mr. Fish to Mr. Moran.

No. 21 of November 15, 1875. (Same as No. 756 of same date to Mr. Washburne, p. 98.)

Mr. Moran to Mr. Fish.

No. 47.] LEGATION OF THE UNITED STATES,
Lisbon, December 9, 1875.

SIR: I received your Nos. 21 and 22, with inclosures, on the 6th instant, and have made myself thoroughly familiar with their contents. In compliance with the instructions in the postscript to No. 21, I have not communicated the substance of your No. 266 to Mr. Cushing to Mr. Corvo; but should you direct me by telegraph or otherwise to do so your orders shall be promptly attended to.

At present I can not form a reliable opinion as to the steps Portugal may be disposed to take in her intercourse with Spain touching this painful conflict in Cuba, but I think that her anxiety to be on good terms with that Government will cause her to hesitate to urge upon the Spanish cabinet at this time the importance and necessity of either abandoning or terminating the contest, however much she may desire to see it brought to an end.

I have, etc., BENJAMIN MORAN.

Mr. Moran to Mr. Fish.

No. 51.] LEGATION OF THE UNITED STATES,
Lisbon, December 31, 1875.

SIR: Señor Alexander de Castro, who was recently appointed ambassador extraordinary and minister plenipotentiary from Spain near this court, arrived in Lisbon on the 21st instant, had an audience with and presented his letter of credence to the King on the 28th, and yesterday and to-day received by invitation his colleagues of the corps diplomatique at the palace of the Marquis de Penafiel, which he has taken for his residence during his stay in Lisbon.

I called upon his excellency this afternoon and was cordially received. He is a person of good presence, is tall and courtly, and would be called distingué in any society. Our conversation was brief, but we did not in any way touch upon politics. As neither he nor I had anything to say to each other about the relations between the United States and Spain, we prudently avoided any reference to that subject; but I was struck with the conviction that I shall find him at least a courteous colleague.

Why Spain has sent an ambassador here to replace an envoy extraordinary is not very well understood, especially as Portugal can not return the honor. It is generally believed, however, in well-informed circles in Lisbon, that it is more a personal compliment to Señor de Castro on the part of his sovereign than a mark of admiration for Portugal, although his speech to the King, a copy and translation of which I inclose, with the King's reply, would lead the world to a different conclusion. He is a man of considerable influence in Spain

under the present Government, and it is well known that he has no intention of remaining here for more than five or six months. You will observe that he cautiously insinuates disapprobation of an Iberian union; but this Government is very anxious on that point, and it is not sure that Spain will not overrun Portugal in the event of the independence of Cuba as compensation for the loss of her greatest colony. And yet, although Spain undoubtedly longs for the unification of the peninsula—although such unification would be quite as beneficial to Portugal as to Spain—although England and Scotland hated one another worse than Spain and Portugal do, and yet eventually came together to their common advantage—although the tendency toward unification is the general fact in modern times, as evinced in the cases of Sweden and Norway, of Italy, and of Germany, and can not fail to come sooner or later as respects Spain and Portugal—yet, I believe that no sensible Spaniard contemplates this union by means of war or of any force other than that of circumstances, which it is certain, sooner or later, will induce Portugal to desire it equally with Spain, however strong the opposition to such an end may now be in this Kingdom.

The underlying fear, however, on the part of this Government and people that Spain will seek an early pretext to imperil the independence of Portugal in the event of her losing Cuba, is so apparent to me that I am satisfied that Portugal will under no circumstances at present venture to urge upon the Spanish Government the importance of a speedy termination of the conflict in Cuba, although I am satisfied that this Government ardently desires such a result. I hope, however, that I may be mistaken in this, and that when the time arrives for action Portugal will not be found wanting in her duty to the cause of humanity, justice, and mercy.

I have, etc., BENJAMIN MORAN.

[Inclosure 1 in No. 51.—Translation of speech of Señor de Castro to the King, December 28, 1875.]

SIR: The King, Alfonso XII, of Spain sends me to Your Majesty as ambassador extraordinary and minister plenipotentiary. I have now the high honor to place in Your Majesty's hands the royal letter which accredits me.

Sir, the personal representation with which my august Sovereign has deigned to invest me is a demonstration of the high esteem in which Your Majesty is held and of my Sovereign's ardent desire to cement more and more the friendship with the august person of Your Majesty, with the royal family, as well as the intimate and cordial alliance between two people who mutually respect each other and hold fraternal relations.

To obey the desire of my august Sovereign is my principal duty. To fulfill this is my ardent wish. One and the other will be easy for me to accomplish if Your Majesty concedes me his good will and his Government the cooperation which is necessary.

Portugal and Spain are as two good and old friends, who in the recollection of their respective and similar glorious actions can and ought to live together without other rivalries than an honorable incentive to add to such actions, while being both supported by the constitutional monarchies by which they are governed.

May Your Majesty deign to accept the homage of my profound respect.

[Inclosure 2 in No. 51.—Translation of the King's speech in reply to Señor de Castro, December 28, 1875.]

Señor AMBASSADOR: Having received the letter of His Majesty the King of Spain, which accredits you as ambassador extraordinary and minister plenipotentiary at my court, I have heard with sincere pleasure all that you have just expressed to me in the name of His Majesty; both what relates to myself, the royal family, and to

the nation over whose destinies I preside, as also concerning the honorable and important mission to represent him personally which your august sovereign has designed to entrust you with.

Deeply sensible of this act of courtesy on the part of His Majesty the King Alfonso XII, I shall always hold it as an agreeable duty to reciprocate his beneficent wishes. I shall, moreover, not cease to employ every means within my reach to preserve the good harmony, and cement more and more the relations of sincere friendship which happily subsist between the two people, united by identity of political institutions, by the record of their glorious deeds in the forefront of civilization and human progress.

As to yourself, Señor Ambassador, I have much pleasure in assuring you that I hold in high esteem your celebrity and the distinguished qualities which adorn you; with such honorable precedents already known to me, no doubt need rest in your mind but that you have obtained already the right of my good will and to the esteem and loyal cooperation of my Government.

Mr. Fish to Mr. Moran.

No. 26.] DEPARTMENT OF STATE,
Washington, January 4, 1876.

SIR: Your dispatches numbered 46 and 47 have been received. With reference to the last-mentioned dispatch, I have to state that, although a copy of the instruction addressed to Mr. Cushing (No. 266) was transmitted to you, the Department, upon considering the question of which it treats, reached the same conclusions as to the course which would likely be taken by the Government of Portugal as are expressed by you; hence it did not instruct you to make any communication in regard thereto to that Government, nor is it at this time deemed advisable to so instruct you.

I am, etc., HAMILTON FISH.

RUSSIA.

Mr. Fish to Mr. Boker.

No. 13 of November 15, 1875, and telegram of December 13, 1875.

(Same as No. 756 of November 15, 1875, and telegram of December 6, 1875, to Mr. Washburne, pp. 98, 99.)

Mr. Boker to Mr. Fish.

[Telegram.]

ST. PETERSBURG, *December 16 1875.*

Gortchakoff promises, if Emperor consent, representations shall be made to Spanish Government freely, agreeing to do all in his power for the preservation of good relations. He, however, doubts influence of Russia at Madrid, but sympathetically appreciates our difficulty.

BOKER.

Mr. Boker to Mr. Fish.

No. 35.] LEGATION OF THE UNITED STATES,
St. Petersburg, December 16, 1875.

SIR: I have the honor to inform you that on the morning of the 14th instant I received from you a cipher telegram. As this was not written

with the key I had sent to you, nor with that which I had at first received from you, it was impossible to decipher it. I therefore telegraphed to you, "Cipher unintelligible; send keyword or use scythe."

That evening Mr. Schuyler succeeded in deciphering your telegram, making it read, "Proceed as instructed in number thirteen," thus getting your keyword, and this interpretation was confirmed by your telegram received yesterday morning.

I immediately acted upon your instructions and saw Prince Gortchakoff. The details of this interview I shall give you in another dispatch. As a summary of its result, I sent you a cipher telegram, a copy of which I inclose.

I have, etc., GEO. H. BOKER.

Mr. Boker to Mr. Fish.

No. 36.] LEGATION OF THE UNITED STATES,
St. Petersburg, December 18, 1875.

SIR: I have the honor to say that in accordance with your instructions, already referred to in my dispatch No. 35, I called on Prince Gortchakoff for the purpose of laying before him the state of the relations existing between the United States and Spain, as set forth in the inclosures to your dispatch No. 13, and of suggesting to him whether, in the present uncertain condition of the negotiations, it might not be deemed advisable by the Government of Russia to make such representations to the Spanish Government as may hasten the peaceful settlement which the Government of the United States has in view.

On laying before Prince Gortchakoff a condensed statement of the facts, and the arguments contained in your dispatches to Mr. Cushing, I found that the chancellor not only took a deep interest in the questions before him, but he spontaneously offered, if that course should be in accordance with the wishes of the Emperor, to employ the good offices and the friendly advice of the Russian Government with that of Spain, with the intention of effecting an equitable adjustment of the difficulties. At the same time Prince Gortchakoff cautioned me not to expect too much from the intervention of Russia in Spanish affairs, as the influence of the Imperial Government with that of Spain could not be very great at the present time, owing to the long-existing diplomatic rupture between the two countries, the memory of which had scarcely died away at Madrid, the little intercourse between the peoples, and the almost complete separation in which each power exists in relation to the interests of the other.

When I recounted to Prince Gortchakoff a narrative of the events which had led to the complication between the United States and Spain, he expressed the warmest sympathy with the United States. He seemed to be surprised at the patience and the forbearance with which our Government had acted, not only toward the Government of Spain, but toward the more easily approached provincial authorities of Cuba. He said, significantly, that history does not show us that this has been the usual conduct of strong powers toward weaker ones. He commended the reluctance which the Government of the United States seemed to feel in proceeding to serious measures with a country in the distracted condition of Spain, and he said that this last act, the laying of the question before the great powers for their consideration and possible action, was a display of candor and of magnanimity on our part that was almost without precedent in international affairs, and

that it must forever set at rest the report that the United States had views of territorial extension in the direction of Cuba.

In commenting on the possible results of a rupture between the United States and Spain, Prince Gortchakoff observed that the earliest and the most inevitable consequence of hostilities would be the loss of Cuba to the Spanish Crown. This event, in his opinion, would be fatal to the prospects of the yet unsettled King of Spain; as it would be a humiliation to Spanish pride which none of the many political parties of the Kingdom could venture to forgive for the sake of upholding the insecure throne of the young King. That consideration seemed to Prince Gortchakoff to be the most important and pressing one to Spanish interests, and should the Emperor agree that representations be made to the Spanish Government, as to the questions at issue between Spain and the United States, I have little doubt that the argument addressed to that Government will be most strongly urged from the point of view just stated.

I shall take care to acquaint myself with any steps that may be taken by the Government of Russia in the direction above proposed, and I shall give to the Department the earliest intelligence of the result of the movement.

I have, etc., GEO. H. BOKER.

Mr. Boker to Mr. Fish.

[Telegram.]

ST. PETERSBURG, *December 23, 1875.*

Russian envoy at Madrid instructed to make representations to Spanish Government. Gortchakoff thinks everything will depend on action of England.

BOKER.

Mr. Boker to Mr. Fish.

No. 38.] LEGATION OF THE UNITED STATES,
St. Petersburg, December 23, 1875.

SIR: I have the honor to say that this morning I had an interview with Prince Gortchakoff in regard to the diplomatic representations which it was proposed should be made by Russia to the Spanish Government touching the precarious relations at present existing between the latter Government and that of the United States, the substance of which interview I this day transmitted to you in a cipher dispatch, a copy of which is herein inclosed.

Prince Gortchakoff informed me that the Emperor had acquiesced in the design, and that instructions had been forwarded to the Russian minister at Madrid to lay before the Spanish Government the views of the chancellor as expressed in my dispatch No. 36, of December 18, 1875, and to proffer friendly and serious advice to that Government in accordance with the spirit of those views.

While Prince Gortchakoff assured me of the pleasure which it gave the Emperor and himself to act in the interest of peace and of good understanding between friendly nations, he once more requested me to remember that which he had previously said as to the moderate influence which Russia must be supposed to exercise in Spanish affairs.

He also reiterated the opinion—as though it were the summing up of his judgment as to the question—that the course of Spain would depend altogether upon the action of the British Government, and the representations which might be made by it at the court of Madrid, regarding the unsatisfactory relations between the United States and Spain. He said that the combined influence of all the other powers was not equal to that of Great Britain with the Spanish Government; and he supposed that as the United States and Great Britain had a common interest and a like grievance in the questions which grew out of the affair of the *Virginius*, the policy and the action of the two nations would be in harmony.

I have, etc., GEO. H. BOKER.

Mr. Fish to Mr. Boker.

No. 25.] DEPARTMENT OF STATE,
Washington, January 13, 1876.

SIR: Your No. 36, reporting the result of your interview with Prince Gortchakoff on communicating to him No. 266 to Mr. Cushing, pursuant to instruction No. 13, has been read with interest and attention, and it is a source of satisfaction to learn that the chancellor should have been impressed with the views of the President contained therein and the patience and forbearance manifested by the United States toward Spain.

It was because the President was satisfied that such conclusions must be reached by an unbiased friendly power to whom the facts might be communicated, that you were instructed to bring the instruction and the views of this Government to the notice of the minister for foreign affairs.

I await with interest further intelligence as to the course pursued by Russia and as to any instructions which may be issued to the representative of that Government at Madrid.

While appreciating the frankness of the chancellor and the friendly disposition manifested by him, there are certain expressions in your dispatch which suggest the possibility of some misapprehension of the purpose of this Government in making the communication in question.

You state that on laying before the chancellor a condensed statement of the facts and arguments, he spontaneously offered, if in accordance with the wishes of the Emperor, to employ the good offices and friendly advice of the Russian Government with that of Spain with the intention of effecting an equitable adjustment of the difficulties, and in the latter portion of the dispatch that the chancellor stated that the act of this Government in laying the question before the great powers for consideration and possible action was a display of candor and magnanimity almost without precedent in international affairs.

Instruction No. 266 having been presented to the Government of Spain by Mr. Cushing at Madrid on November 30, you were instructed on the 13th day of December to read the same to the minister for foreign affairs at St. Petersburg, and to assure him of the sincere desire of the President for a termination of the conflict in Cuba by the spontaneous action of Spain, or the agreement of the parties, and to state that should the Government to which you are accredited find it consistent with its views to urge upon Spain the necessity of terminating or abandoning this contest, it was believed that the friendly expression of such views might tend to the earlier restoration of peace and prosperity to Cuba.

It was intended to bring to the notice of Spain the friendly expression of the unbiased and disinterested views of a member of the great family of nations in reference to the necessity of a termination of the conflict in Cuba, but it was not the intention of this Government to go further, nor was it expected that the Russian Government should take any steps toward effecting an adjustment of the individual griefs of the United States, nor that it should lend any material assistance under any circumstances. The course adopted by this Government was deemed a just and manly one toward Spain, beneficial to humanity at large, and calculated to put at rest any question of ulterior motives on the part of the United States.

I refer to this question by way of greater caution, because on such delicate subjects a shade of misapprehension or a slight change of meaning may at times lead to erroneous impressions, and while therefore conveying to the chancellor the thanks of this Government for his declarations, and with an appreciation of his friendly disposition, it may be well to make it certain that no misapprehension exists in reference to the subject.

I am, etc., HAMILTON FISH.

Mr. Boker to Mr. Fish.

No. 55.] LEGATION OF THE UNITED STATES,
St. Petersburg, February 9, 1876.

SIR: Referring to your dispatch No. 25, under date of January 13, 1876, I have the honor to say that I am confident no misapprehension exists or ever existed in the mind of Prince Gortchakoff as to the purpose of the Government of the United States in orally communicating to the Government of Russia dispatch No. 226, addressed to Mr. Cushing, in accordance with your instruction No. 13.

After having carefully considered the three concluding paragraphs of your dispatch No. 25, I feel justified in saying that Prince Gortchakoff understood my communication in the sense in which the purpose of the Government is therein expressed, and in no other sense of which I am at present aware. He distinctly understood from me that the only remedy that could be applied to the many difficulties which have grown out of the civil war in Cuba, as set forth in the dispatch to Mr. Cushing, No. 266, was, in the opinion of the Government of the United States, a speedy pacification of the island. That is to say, the main question which concerned the powers friendly to Spain was the general condition of things in Cuba, while the particular questions between the United States and Spain which had arisen from the situation were exposed to the Government of Russia by way of furnishing argument and illustration of the direction in which matters were drifting.

Prince Gortchakoff did not understand from me that any kind of intervention between the United States and Spain was suggested or desired on the part of my Government; nor could he have inferred from my language that the Government of the United States did not consider itself to be capable, without foreign aid, of settling its affairs with Spain.

The suggestion which I made to Prince Gortchakoff, and upon which I believe he acted, was, that if, after considering the state of things in Cuba, the Imperial Government should, in the interests of Spain, and with a view to the preservation of the peace of the world, make such

friendly representations as it saw fit to the Government of that country, such a course would be satisfactory to the Government of the United States. I did not attempt to prescribe the character of the representations to be made; but as all the difficulties had arisen from the distracted state of the Island of Cuba, it could not but be inferred that the only feasible advice that could be given must have for its object the pacification of that island.

From the first I saw how delicate were the issues involved in the business which I had undertaken, and how readily Prince Gortchakoff might decline to act, on the principle of noninterference with the domestic affairs of a friendly nation. On the other hand, I desired to succeed in the negotiation, and to bring about the end which my Government had in view, without placing the United States under the burden of an obligation to Russia. I therefore kept prominently in sight the ulterior interests of Spain, which were to be served by an induced change in her policy, and I thought that I had met with a fair measure of success when I perceived that Prince Gortchakoff's views took the same direction.

I take it for granted that it was hardly supposed by the Government of the United States that the exposition of the facts and the arguments employed in dispatch No. 226, although communicated confidentially to Prince Gortchakoff, would not be used substantially by him in any representations which he might instruct the minister of Russia at Madrid to make to the Government of Spain, since without that information, according to Prince Gortchakoff's statement as to his slight knowledge of the subject, he would have had no grounds upon which to base the proposed representations.

On reading over my two dispatches Nos. 36 and 38, from the stress which I have laid upon the then exciting topic, the precarious relations existing between the United States and Spain, and the rumors of an impending war, which indeed greatly influenced the direction of the conversation between Prince Gortchakoff and myself, I can easily understand how I, in writing my dispatches, was led away from the main subject, the present condition of Cuba, and confined myself almost wholly to Prince Gortchakoff's views of the threatening aspect of affairs between the two countries.

I believe, however, that neither Prince Gortchakoff nor I lost sight of the fact that the cause of the perilous aspect of affairs lay in the state of things in Cuba, and that the only remedy for the difficulty would be found in a change of the policy of Spain toward her colony. I now observe, however, that in the two dispatches above referred to I rather reported Prince Gortchakoff's words than my own, and by thus giving a too one-sided view of the matter I conveyed an erroneous impression as to the attitude which I assumed on the part of the United States.

I have, etc.,

GEO. H. BOKER.

Mr. Boker to Mr. Fish.

No. 56.] LEGATION OF THE UNITED STATES,
St. Petersburg, February 10, 1876.

SIR: In order to satisfy the Government of the United States fully as to the understanding of Prince Gortchakoff of the communication made to him by me, which forms the subject of my dispatch No. 55,

under date of the 9th of February, I, to-day, had an interview with that gentleman.

On communicating to him the substance of the three concluding paragraphs of your dispatch No. 25, he assured me that he had not had any misapprehension of the object sought to be accomplished by the Government of the United States, nor any misunderstanding of the language which I had used to him on the occasion of my first interview, and that instructions to the Russian minister at Madrid to use his good offices with the Spanish Government for the proposed object had been written in accordance with the spirit of the words contained in your dispatch No. 25.

When I communicated to Prince Gortchakoff that part of your dispatch No. 25 in which the thanks of the Government of the United States are conveyed to him for his opinions and course regarding our complications with Spain, the chancellor seemed to be deeply touched, and he warmly returned his acknowledgments for the courtesy extended to him.

I have, etc., GEO. H. BOKER.